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In the Supreme Court of the United States

ROBERT RICKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-30084

United States Court of Appeals
Fifth Circuit

FILED

May 22, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ROBERT RICKS, also known as Ra-B Ricks,

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:16-CR-11-1

Before CLEMENT, GRAVES, and OLDHAM, Circuit Judges.

PER CURIAM:*

A jury found Robert Ricks guilty of several drug and gun crimes. He asks this court to overturn that verdict and quash his indictment because of alleged procedural errors. Finding no reversible error, we AFFIRM.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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FACTS AND PROCEEDINGS

In February 2015, the New Orleans Police Department (NOPD) received a tip that someone named “Robbie” was dealing drugs out of a house at 1201 Belleville Street. Robert Ricks lived there with his girlfriend Mandi Malbroue (Mandi) in a house owned by Mandi’s parents.

NOPD officers conducted surveillance of the house. Officer Chantell Long observed from a car. She saw Ricks engage in multiple hand-to-hand drug transactions and relayed that to nearby teams, who stopped the individuals immediately thereafter, discovering them to be in possession of heroin.

As they approached the house to execute a warrant four days later, officers observed Ricks completing another drug deal. In Ricks’s and Mandi’s bedroom, officers discovered heroin, crack cocaine, powder cocaine, marijuana, a digital scale bearing drug residue, drug paraphernalia, \$3,641 in cash, and a loaded handgun.

Ricks and Mandi were arrested on state gun and drug charges. Mandi pleaded guilty to the drug charges but not to the gun charge. Ricks was charged, federally, with conspiracy to possess heroin and cocaine with the intent to distribute, possession of heroin and cocaine with the intent to distribute, possession of a firearm in connection with a drug-trafficking offense, and being a felon in possession of a firearm.

Prior to trial, Ricks moved to quash the indictment, alleging that federal agents had met with Mandi on two occasions and that, on both occasions, she admitted to owning the gun and the drugs. According to Ricks, the agents responded by threatening Mandi with federal charges if she testified in his defense. Ricks asserted that these threats would interfere with his ability to call a witness and violate his rights under the Fifth and Sixth Amendments,

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“[i]f the government does not cure its interference . . . by granting Mandi immunity.”

The Government denied that Mandi had been threatened, arguing that agents had only cautioned her that, if she knowingly provided false testimony, she would risk prosecution for perjury. The Government then offered her statutory immunity, allowing her to testify without fear of prosecution on the drug and gun charges.

The district court entered an order giving Mandi immunity. The order stated that no information derived from her testimony could be used against her in any criminal case “except in a prosecution for perjury, [or] giving a false statement.” The court denied Ricks’s motion to quash as moot—presumably because of the immunity deal.

Four days before trial, Ricks learned that Officer Long had been diagnosed with a brain tumor that affected her vision. Ricks moved for a continuance to investigate, urging that the evidence was potentially exculpatory, but the Government opposed the motion, asserting that the officer’s medical condition did not constitute exculpatory information and was irrelevant as the condition did not appear until months after the surveillance at issue. The Government noted that Officer Long’s testimony would be corroborated by significant evidence, including the testimony of other officers working surveillance with her and individuals who met with Ricks shortly before their arrests. The district court denied the continuance.

At trial, Officer Long testified about the surveillance, as well as about her medical condition. She denied having had any issues in February 2015 and identified Ricks as the individual she observed dealing drugs. Defense counsel questioned her about her condition and the onset of her symptoms.

Individuals Officer Long observed engaging in hand-to-hand transactions testified at trial, admitting that they had been arrested for drug

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possession on February 15, 2015, and that they had met with Ricks immediately prior to their arrests. Other officers working with Officer Long corroborated her testimony. Additionally, one of them testified that he had also participated in executing the search warrant and that the drugs were hidden among men's clothing and behind a shoe rack containing men's shoes. The powder cocaine was located near an identification card bearing Ricks's name, and the card was covered in powder, indicating that it had been used to cut the drugs. The officer also stated that the gun was found hidden in a man's sock in a drawer alongside some containers for men's watches. Ricks identified himself as the owner of the cash found on the scene.

An individual named James Chapman testified that he had been regularly using crack cocaine, which he bought from Ricks. Chapman saw Ricks selling drugs to others, introduced him to other dealers, and sometimes drove him to drug deals. A neighbor testified that he had seen Ricks dealing drugs on numerous occasions; he explained that Ricks and Mandi worked together.

Cellphones seized during the search showed that, in the five days between the surveillance and search, Ricks had made or received more than 500 phone calls, most of which lasted less than one minute and many of which occurred after midnight. Several contacts listed in Ricks's phone contained the notation "sm" or "smk," apparently meaning "smack," slang for heroin. Ricks's phone also had listed as a contact "Apple," who was known to be a narcotics trafficker, as well as other contacts also known to be traffickers. Text messages

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from Ricks's phone revealed exchanges setting up drug deals and texts from Mandi referencing those deals and warning Ricks about police activity.

Bureau of Alcohol, Tobacco, and Firearms Agent Anthony Calagna testified¹ that, in January 2015, he began conducting video surveillance on the 1200 block of Belleville Street related to another investigation, and that the video surveillance had captured Ricks conducting what appeared to be hand-to-hand drug transactions. He became involved in Ricks's case after Ricks and Mandi were arrested, and he interviewed Mandi. Mandi told agents that the drugs and gun were hers, and she pleaded guilty to drug charges in state court, but the agents believed that Ricks and Mandi jointly owned the drugs and that Mandi was not being truthful. Additionally, at least in part because Mandi did not plead guilty to the gun charge, the agents suspected that the gun was not hers. Mandi was not charged federally.

Agent Calagna explained that, when he questioned Mandi, Mandi repeated that both the drugs and gun were hers. He specifically testified as follows:

Q: Did you ask [Mandi] about the drugs and gun found during the search outside of the grand jury?

A: I did.

Q: What did she say?

A: She said that the guns and the drugs were hers.

Q: Did she say – did she deny that they were [Ricks's]?

A: No, she did not – well, initially, she did.

Q: Okay. What did you tell her?

A: We explained to her that we knew what she was doing. We knew that she was taking – attempting to take the charges for [Ricks]. We explained to her that if she was put into the grand jury and sworn under oath, that she'd be committing perjury in a federal grand jury.

¹ The district court had ordered that each side sequester its witnesses, so Mandi was presumably not present to hear this testimony.

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Q: Why did you believe that giving that testimony to the grand jury would be perjury?

A: Because based on the evidence we knew, the fact that she didn't plead to the gun in Orleans Parish, and that we believed that Robert Ricks was also in control of those narcotics and the firearm.

Q: What happened after you told her that lying in the grand jury would be – could be a crime?

A: She broke down. She was crying. She told us that she just couldn't do it. She couldn't testify against [Ricks], that he's the father of her child, but that she would cooperate on any other individuals in the 1200 block of Belleville and testify against them.

Q: Did you threaten that you would seek to charge her in the federal drug case if she didn't change her story and say that the drugs were [Ricks's]?

A: No, sir.

Q: Did you try to coerce her into saying that the drugs were [Ricks's]?

A: No, sir.

Q: Did you coerce her into saying that the gun was [Ricks's]?

A: No, sir.

Q: Was she called to testify before the grand jury?

A: She was not.

Q: Why not?

A: Because we knew that putting her in the grand jury knowing that she was lying was going to make her available to potential perjury charges, which we weren't going to do to her.

Ricks renewed his motion to quash, urging that this testimony amounted to a threat to prosecute Mandi for perjury, rendering the immunity grant null. The district court denied the motion.

Agent Calagna went on to say that he had listened to phone calls recorded at the Orleans Parish prison, including one between two individuals known as "Butter" and "Apple," in which Butter directed Apple to collect money from Ricks.

Defense counsel asked Agent Calagna whether he had also reviewed any of Ricks's prison phone calls, and Agent Calagna responded that he had. Counsel then stated that the Government had not provided copies of Ricks's

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prison phone calls, argued that the calls likely showed that Ricks had denied any involvement in drug trafficking, and claimed that the records constituted exculpatory *Brady* material.

The Government responded that it had no discovery obligation relating to Ricks's prison calls both because Ricks's phone calls were irrelevant and because they were not in the Government's custody or control. The call records were maintained in the parish prison facility, not the federal Bureau of Prisons, and although agents could log onto the parish prison system to review the calls, the Government claimed it did not have custody over the records. The Government further noted that Ricks was a participant in his own calls. The district court overruled the objection, concluding that there was no discovery violation.

Despite the order granting Mandi immunity, Ricks did not call her as a witness, instead asking Agent Calagna whether the drugs belonged to her and her previous boyfriend, "Pig." During closing argument, defense counsel raised the issue of Officer Long's impaired vision and asserted that the Government's failure to produce Ricks's calls indicated that they contained no incriminating evidence.

The jury found Ricks guilty on all counts.

STANDARD OF REVIEW

The existence of substantial interference with the right to call a witness and to present a defense is a "factual question" that is reviewed for clear error. *United States v. Thompson*, 130 F.3d 676, 686–87 (5th Cir. 1997); *see also United States v. Skilling*, 554 F.3d 529, 567 (5th Cir. 2009), *aff'd in part and vacated on other grounds by Skilling v. United States*, 561 U.S. 358 (2010). "A factual finding is clearly erroneous only if, based on the entirety of the evidence, the reviewing court is left with the definite and firm conviction that a mistake has been made." *United States v. Cordova-Soto*, 804 F.3d 714, 718

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(5th Cir. 2015). Any such violation is subject to harmless-error analysis, and this court “will not reverse unless the . . . conduct was sufficiently egregious in nature and degree so as to deprive [the defendant] of a fair trial.” *Skilling*, 554 F.3d at 567 (second alteration in original) (internal quotation marks omitted).

A district court’s denial of a continuance is reviewed for an abuse of discretion. *United States v. Porter*, 907 F.3d 374, 383 (5th Cir. 2018); *United States v. Stalnaker*, 571 F.3d 428, 439 (5th Cir. 2009); *United States v. Walters*, 351 F.3d 159, 170 (5th Cir. 2003). “[T]he movant must show that the denial resulted in specific and compelling or serious prejudice.” *United States v. Barnett*, 197 F.3d 138, 144 (5th Cir. 1999) (internal quotation marks omitted). This court will uphold the district court’s decision, even if it was harsh, if it was not arbitrary or unreasonable. *Stalnaker*, 571 F.3d at 439.

This court reviews “alleged discovery errors for abuse of discretion and will order a new trial only where a defendant demonstrates prejudice to his substantial rights.” *United States v. Garcia*, 567 F.3d 721, 734 (5th Cir. 2009); *see also United States v. Doucette*, 979 F.2d 1042, 1044–45 (5th Cir. 1992).

DISCUSSION

Ricks argues that, when it threatened Mandi, the Government interfered with his constitutional rights to call witnesses and to present a defense. He says that Mandi’s testimony would have been material and exculpatory and that he could not establish his innocence without it. He relies on Agent Calagna’s testimony establishing that Mandi was willing to testify that the drugs and gun were hers and urges that Agent Calagna’s threat, communicated in open court, to prosecute her for perjury if she testified for the defense, amounted to misconduct. Although Ricks admits the grant of immunity cured the initial alleged “threats” in conversations with

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investigating officers, he argues that Agent Calagna’s threat during his trial undid the cure.²

A criminal defendant has a right under the Sixth Amendment to “present witnesses to establish his defense without fear of retaliation against the witness by the government.” *United States v. Dupre*, 117 F.3d 810, 823 (5th Cir. 1997). Moreover, “the Fifth Amendment protects the defendant from improper governmental interference with his defense.” *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. 2002). So “[s]ubstantial government interference with a defense witness’ free and unhampered choice to testify violates [the] due process rights of the defendant.” *United States v. Anderson*, 755 F.3d 782, 792 (5th Cir. 2014) (internal quotation marks omitted).

To prevail on a claim of substantial interference, “the defendant must show a causal connection between the governmental action and the witness’ decision not to testify.” *Id.* (internal quotation marks omitted). Showing a mere correlation between the Government’s action and the witness’s decision not to testify will not suffice. *United States v. Girod*, 646 F.3d 304, 312 (5th Cir. 2011).

Ricks acknowledges that the Government offered Mandi immunity. But, in his brief, he contends that Agent Calagna’s testimony to the effect that Mandi risked perjury if she testified that the gun and drugs were hers constituted an open-court threat that intimidated her.

² At oral argument, counsel suggested that the alleged open court threat was not actually reversible error but rather that the agent’s previous communications with Mandi amounted to threats and that the immunity waiver did not cure those threats. Counsel offered no evidence that Ricks made this argument to the district court and did not brief it in this court. Indeed, the argument in Ricks’s brief—rather than the new one presented at oral argument—is consistent with the objection counsel lodged at trial. Accordingly, this new argument has been forfeited. *See Rosedale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86, 89 (5th Cir. 2011) (preserving an argument on appeal requires that the argument “be raised to such a degree that the district court has an opportunity to rule on it” (internal quotation marks omitted)); *United States v. Thibodeaux*, 211 F.3d 910, 912 (5th Cir. 2000) (*per curiam*) (reciting the longstanding “rule in this circuit that any issues not briefed on appeal are waived”).

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Ricks has provided no evidence showing that Agent Calagna's testimony was the reason that Mandi did not testify.³ *See Anderson*, 755 F.3d at 792; *see also Thompson*, 130 F.3d at 687 ("The defendant bears the burden of showing that testimony would have been different *but for* the government's actions.").

When Agent Calagna testified, Mandi had not been called. And at the start of trial, the district court had ordered the witnesses sequestered. So Mandi was presumably not present to hear the alleged threat on which Ricks bases his interference claim. Ricks does not offer any theory as to how Mandi heard Agent Calagna's testimony or how it affected her. Indeed, at oral argument, counsel admitted that Mandi could not have heard Calagna's testimony.

It was not clearly erroneous for the district court to conclude that an alleged threat, which was admittedly not heard by the person allegedly being threatened, did not amount to substantial interference.

But there is an independent problem. Our caselaw holds that a constitutional violation, under *Webb v. Texas*, 409 U.S. 95 (1972), requires (1) a threat of certain prosecution (2) directed specifically at the witness. *See, e.g.*, *United States v. Jackson*, 453 F.3d 302, 306 n.8 (5th Cir. 2006); *United States v. Gloria*, 494 F.2d 477, 484–85 (5th Cir. 1974); *United States v. Miller*, 491 F.2d 638, 648 n.17 (5th Cir. 1974). Even assuming Mandi was made privy to Calagna's testimony—indeed, even assuming she was in the room—neither of those prerequisites would be met here. An investigator talked about (not to) a potential witness and about possible (not certain) prosecution.

³ The causation evidence on which Ricks relies—an affidavit executed by a private investigator for the defense—was submitted as part of the pretrial motion to quash before Mandi was granted immunity and is irrelevant to the argument briefed on appeal. In other words, Ricks needed to introduce some evidence showing that Agent Calagna's testimony and interview statements had scared Mandi out of testifying *despite* the subsequent grant of immunity.

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Ricks next contends that the district court erred in denying his pretrial motion for a continuance following the Government's late disclosure that Officer Long had been diagnosed with a condition affecting her vision. He complains that the Government disclosed that there were numerous other young black men being investigated for street-level drug dealing in the same area and that the denial of the continuance forced him to proceed to trial without time to investigate whether Officer Long's medical condition impacted her ability to identify Ricks. Ricks argues that the denial limited his ability to cross-examine Officer Long.

Ricks's general complaints about an inability to investigate Officer Long's condition do not demonstrate that he suffered specific or compelling prejudice. Because his briefs do not point to any specific or compelling prejudice, he has forfeited any such argument. *See United States v. Scroggins*, 599 F.3d 433, 446–47 (5th Cir. 2010); Fed. R. App. P. 28(a)(8)(A). Ricks also does not rebut the Government's argument that Ricks's charges were unrelated to Officer Long's identification because he was not charged with the distributions observed during the surveillance.

Even had he briefed the argument and responded to the Government, the evidence corroborating Officer Long's testimony is utterly overwhelming. Individuals to whom Officer Long observed Ricks sell drugs were stopped shortly thereafter with drugs and admitted to meeting with Ricks immediately prior to their being stopped. Others described witnessing Ricks engaged in the sale of illegal drugs. And Ricks's bedroom was filled with drugs, cash, a gun, and drug paraphernalia. Consequently, Ricks cannot show that the denial of his motion for a continuance was an abuse of discretion because it could not have amounted to anything more than harmless error—which cannot logically have caused prejudice.

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Finally, Ricks urges that the Government violated Federal Rule of Criminal Procedure 16 by failing to provide him tapes of his prison phone calls, and that the district court erred in concluding that the tapes were not discoverable. He claims that he was prejudiced as a result and that reversal is warranted because, without access to those calls, his ability to cross-examine Agent Calagna was improperly limited.

Ricks cannot demonstrate that the district court abused its discretion under Rule 16 because he fails even to assert that the records were “relevant” to any issue at trial.⁴ Indeed, at oral argument, counsel conceded that Ricks never mentioned the calls to counsel—suggesting that there was nothing relevant on them since he, as a participant, must have been aware of their contents.

Moreover, even if the failure to disclose the records amounted to error, Ricks cannot show that the error was sufficiently prejudicial to warrant reversal because, as the district court found, Ricks was already aware of the substance of his own prison phone calls and could have easily subpoenaed the records himself. *See United States v. Ellender*, 947 F.2d 748, 756–57 (5th Cir. 1991) (rejecting the claim that the prosecutor violated the district court’s discovery order and *Brady* by failing to produce the defendant’s prison records because, with reasonable diligence, he could have obtained the material himself); *see also Doucette*, 979 F.2d at 1045 (applying the same “reasonable diligence” standard to claims under Rule 16).

Additionally, any claim of resulting prejudice fails given the “overwhelming” trial evidence demonstrating Ricks’s guilt. *See United States v. Cochran*, 697 F.2d 600, 606–07 (5th Cir. 1983) (finding no reversible error

⁴ For that reason, we need not resolve the contested question of whether the records were in the Government’s possession, custody, or control.

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resulting from the Government's failure to produce during discovery copies of tape-recorded conversations between the defendant and others given the independent "overwhelming" evidence of the defendant's guilt); *see also Garcia*, 567 F.3d at 735 (determining that the sufficiency of the evidence to support the defendant's conviction defeated his ability to demonstrate the requisite prejudice resulting from an alleged Rule 16 violation).

The district court's discovery ruling does not amount to reversible error.

CONCLUSION

For the foregoing reasons, we AFFIRM.⁵

⁵ Most of the dissent is devoted to second-guessing the jury by asking factual questions. Were the athletic socks in the dresser men's socks or women's socks? Did Ricks or his girlfriend wear men's watches? In a text exchange between Ricks and his girlfriend, does "them people" refer to police officers? Was Tory Cargo, Ricks's next-door neighbor, a credible witness? It is the jury's job—not ours—to grapple with these factual questions. The dissent has less to say about the legal questions. And even there, the dissent does (or redoes) defense counsel's job. The dissent admits Mandi could not have heard Agent Calagna's "threat" in the courtroom. So, it points to Calagna's earlier conversations with Mandi and argues, "Ricks does not admit that the grant of immunity cured any [earlier] threats." Ricks's own counsel recognized this immunity-is-no-cure claim was raised for the first time at our oral argument. Oral Argument at 24:04-24:30 ("I think that in the briefing I was looking at this a little differently than I should have."). More fundamentally, the dissent never grapples with the fact that Ricks conditioned his motion to quash on "the government . . . cur[ing] its interference . . . by granting Mandi immunity." The government did so. Once we admit that, the only explanation left is the dissent thinks that, to effectively cure any constitutional violation, a grant of immunity must immunize a witness from prosecution for perjury. Not so. *See United States v. Apfelbaum*, 445 U.S. 115, 126 (1980).

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JAMES E. GRAVES, JR., Circuit Judge, dissenting:

Because I would conclude that the government substantially interfered with Robert Ricks' ability to call witnesses and present a defense, which constitutes clear error, and that the trial court abused its discretion in denying a continuance and in not requiring the government to permit access to Ricks' telephone calls reviewed by authorities, I would vacate and remand. Therefore, I respectfully dissent.

Robert Ricks appeals his conviction for conspiracy to possess with the intent to distribute cocaine and heroin, possession with the intent to distribute cocaine and heroin, possession of a firearm in connection with a drug-trafficking offense and being a felon in possession of a firearm. He was sentenced to 300 months imprisonment.

The majority gives a summary of the facts. However, a detailed discussion of the facts is necessary to understand just how crucial any errors were to Ricks' conviction. The majority attempts to dismiss any detailed discussion of the facts presented at trial as second-guessing the jury. Perhaps that explains how the majority repeatedly reached the unsupported and erroneous conclusion that the evidence against Ricks was "utterly overwhelming." The government's failure to introduce absolutely any evidence connecting Ricks to any gun or to the actual drugs found in the Malbroue residence establishes that the government's interference with Ricks' ability to call a defense witness, the denial of Ricks' request for a reasonable amount of time to investigate the debilitating vision problems of the only eyewitness to any alleged hand-to-hand transaction during relevant time period, and the denial of Ricks' access to jail calls reviewed by the government were anything but harmless.

In February 2015, the New Orleans Police Department (NOPD) received an anonymous tip that someone named "Robbie" was dealing drugs out of a

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residence located in the 1200 block of Belleville Street in the Algiers neighborhood. This area was known as a “hot block” with a lot of foot and vehicle traffic and numerous individuals involved in criminal activity, including dealing drugs. Mandi Malbroue’s (Malbroue) parents, Carolyn and Troy Malbroue, owned a house at 1201 Belleville Street. During the time period in question, Robert Ricks, also known as “Ra-B,” was living with Malbroue, their minor child, and her parents at that residence. Also living around the same block was a probationer with prior drug convictions named Robie Turner, who was under investigation during the same time period and who had also absconded at the time of Ricks’ trial, according to his probation officer.

During the evening of February 15, 2015, Officer Chantell Long conducted surveillance from a car parked a block or so away. Among the numerous people and cars, Long observed a person she identified as Ricks engage in what she suspected were two or possibly three hand-to-hand drug transactions. One of the suspected transactions involved a female who walked up around 6 p.m. and briefly sat in a red, Dodge Challenger parked on the street with a male who Long believed was Ricks. A second suspected transaction involved a male passenger exiting a pickup truck and briefly meeting with a male Long identified as Ricks on the front porch at 1201 Belleville. A third suspected transaction involved the male Long identified as Ricks briefly entering a maroon Jeep on the street. Long radioed nearby officers who stopped the individuals from the first and second transactions. Those nearby officers did not witness any of the suspected transactions. Additionally, the Jeep was not stopped and there was no confirmation that any of its occupants were actually involved in any drug transaction.

Nearby officers conducted a pedestrian stop of the female, Nicole Feloss Hill, approximately three or four blocks away. During a search, officers

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recovered one yellow, rectangular pill later identified as Xanax that Hill said she bought from someone else on the street - not from Ricks. Officers also stopped the pickup truck. Passenger Kendall Syvle was in possession of heroin and a syringe. Syvle, who will be discussed in more detail later, did not know the name of the person who sold him the heroin.

Just a few days later, on February 19, 2015, officers served a search warrant in the pre-dawn hours on the Malbroue residence. Officers said that, as they approached the house to execute a warrant at 5:45 a.m., they saw a black male complete what they believed was a hand-to-hand transaction. However, Ricks was inside the house in his pajamas and not wearing shoes when officers arrived. A drug dog failed to alert to any drugs in the house. In Ricks' and Malbroue's shared bedroom, officers discovered heroin, crack cocaine, powder cocaine, marijuana, a digital scale, drug paraphernalia, cash and a loaded gun.¹

The gun was found inside a sock in a plastic set of drawers in the shared bedroom. The exhibit photo shows a black, low cut, athletic sock of the variety that typically comes in both men's and women's styles. Authorities also found an empty, black, plastic box for a firearm. Authorities said there were "a couple of containers for men's watches in the drawer." Yet, the government offered no evidence to connect Ricks to any watch containers, the sock or the gun.²

Men's clothing was not kept in the plastic set of drawers containing the gun or in the wooden dresser, where officers located the cocaine base. Officers

¹ Interestingly, authorities did not recover any Xanax, the type of drug Hill had one pill of in her possession that she maintained she bought from someone on the street and not from Ricks.

² The majority erroneously assumes that the presence of watch boxes in a drawer means that either Malbroue or Ricks was wearing men's watches. Yet the government offered no evidence of the existence of any actual watches and failed to connect any watches or any boxes to either Ricks or Malbroue.

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testified that the dresser drawers contained “junk” like “chargers and, like, broken electronics type stuff.” Additionally, officers described the contents of the dresser as “ambiguous,” indicating it was impossible to tell whether the items belonged to a male or female. Further, Ricks’ clothes were on a bookshelf, along with pieces of his mail and his ID. Those items are how authorities tied Ricks to powder cocaine found on the bookshelf.

In any event, Ricks and Malbroue were arrested on state gun and drug charges.³ Malbroue’s parents received citations for being in possession of marijuana. At the time, Malbroue also had pending state court gun and drug charges stemming from her arrest on June 1, 2014, while living on Iberville Street with a previous boyfriend, Isiah Theophile, also known as “Pig.” The majority states that Ricks identified himself as the owner of the cash found on the scene. But the majority fails to mention that Malbroue also identified herself as the owner of that same cash, which was later used to pay her state court fines.

*** *Witness Interference***

Beginning in 2013, federal authorities were involved in an investigation, known as “Hot Block,” of a group of individuals involved in violent crimes in the area of the 1200 block of Belleville Street in the Algiers neighborhood of New Orleans. Ricks was not part of this investigation, which involved the placement of a pole camera in the 1100 block of Belleville in December of 2014 because of activity involving firearms. Not only did the investigation and camera have nothing to do with Ricks, but all potentially relevant video was destroyed.

³ Malbroue ultimately pleaded guilty to the state drug charges. Meanwhile, Ricks received federal charges.

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Despite the fact that any alleged video was destroyed and not available for review, the district court allowed Special Agent Anthony Calagna with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to testify about it, over objection. Specifically, Calagna was allowed to say what he read about Ricks in a police report in which he was in no way involved and to say that he believed he had previously seen Ricks on video engaged in hand-to-hand drug transactions. Calagna admitted that he made no effort to identify the person he claims he saw on video and failed to save or download the video in any way. Further, Calagna admitted that he could not say he definitely recognized Ricks on the video, but said, again, that he believed it was him because other details matched up with a police report he read at some point. Once authorities decided to pursue federal charges against Ricks, Calagna became involved in his case.

Without the presence of her counsel, Calagna also called Malbroue in for at least two interviews after she and Ricks were arrested but before Ricks' federal indictment. Calagna said officials did not believe it necessary to go through Malbroue's counsel because "we weren't going to address any of her participation or current court proceedings in regards to that case." During the first interview at the ATF office, Malbroue was asked about Ricks and, according to Calagna, said: "She told us that the drugs found during the NOPD search warrant were not Robert's and neither was the gun." However, Calagna chose not to believe her. Likely because accepting her statement as true would address her participation and would mean Calagna improperly interrogated her without the presence of counsel. Following the first meeting, Malbroue accepted a state plea deal, pleading guilty to only possession of narcotics.

The second interview occurred outside the grand jury room at the federal courthouse while Malbroue was in state custody. Again, Calagna asked Malbroue about the drugs and gun found during the search. Again, Malbroue

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said the gun and drugs were hers and denied they belonged to Ricks. Again, Calagna chose not to believe her. At that point, Calagna conveyed the following threat to Malbroue: “We explained to her that we knew what she was doing. We knew that she was taking – attempting to take the charges for Robert. We explained to her that if she was put into the grand jury and sworn under oath, that she’d be committing perjury in a federal grand jury.” Calagna claimed he believed it would be perjury because Malbroue accepted a plea deal that did not include the gun charge and because he believed Ricks was also in control of those narcotics and the firearm. After conveying the threat of perjury if Malbroue did not implicate Ricks, Calagna said: “She broke down. She was crying. She told us that she just couldn’t do it. She couldn’t testify against Robert, that he’s the father of her child, but that she would cooperate on any other individuals in the 1200 block of Belleville and would testify against them.” Importantly, Malbroue never told Calagna that the drugs or gun belonged to Ricks. Instead, Malbroue consistently maintained the drugs and gun belonged to her. Specifically, Malbroue said she told the agents she “knew they had found the gun in her drawer in a sock.”⁴ Further, Malbroue “said that she told them that she had the gun because, during the period she was selling drugs out of her house on Iberville, there was an incident where someone locked a car door, so she couldn’t get out, put a gun to her head, and stole her purse. She said she acquired the gun so she would be able to protect herself if something like that ever happened again.” To prevent Malbroue from telling the grand jury the gun and drugs belonged to her, authorities then decided not to call her to testify. Instead, Calagna was allowed to tell his version of the conversation with Malbroue to the grand jury and his belief that she was lying and would perjure herself.

⁴ Malbroue was interviewed by a private investigator who provided an affidavit.

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Prior to trial, Ricks unsuccessfully attempted to quash the indictment on the basis that federal agents had met with Malbroue on those two occasions and that on both occasions she admitted owning the gun and drugs. Malbroue repeatedly told the agents that the gun and drugs were hers, that the gun was in her drawer, and that she had bought the gun to protect herself after being robbed. Malbroue also repeatedly denied to agents that the drugs and gun belonged to Ricks.

In response to Ricks' motion to quash, the U.S. Attorney moved for an order compelling Malbroue's testimony and granting her immunity. It was granted on the first day of trial. However, the order entered granted immunity, "except in a prosecution for perjury, giving a false statement, or failing to comply with this Order." As stated above, when Calagna met with Malbroue without the presence of her counsel, he told her that she would be facing charges if she testified the gun and drugs were hers, as she had consistently maintained, because she had accepted a plea deal in state court that did not include the gun charge. Calagna repeated this same threat at trial. Malbroue said Calagna also told her that authorities would press charges against her and she was "going to go down for this too" if she testified on Ricks' behalf.

Ricks again moved to quash, asserting that Calagna's testimony basically rendered Malbroue's immunity ineffective.⁵ The district court denied Ricks' motion. Malbroue was present at the courthouse and prepared to testify on Ricks' behalf at trial. However, after Calagna's testimony, Malbroue left the courthouse and did not testify.

At Rick's trial, Hill testified that she had become friends with Ricks when he worked at a barber shop on Washington Avenue and she went to see him to try to borrow some money to buy a Mardi Gras outfit. Hill denied that she

⁵ The majority ignores the fact that Ricks re-asserted his motion to quash.

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purchased or received any drugs from Ricks. She also said there were more than 10 people hanging out on Belleville when she went to see Ricks because it is a hot block.

Sytle testified that he bought different drugs from different individuals on the corner of Belleville, but he didn't know the names of any of the dealers on the corner. He said one person was called "R."⁶ Sytle also testified that he had been high and awake for two or three days at the time of the transaction and had "dealt with maybe 100 guys" that weekend. Sytle also repeatedly testified that officers told him they had him on video buying drugs from an individual they said was Ricks or "Ra-B." Interestingly, during the portion of redirect when Ra-B was referenced, the prosecutor is who first mentioned the name "Ra-B" and the record does not reflect that the name was spelled for the record at that time, yet the transcript shows the unique spelling of "Ra-B" and not "Robbie" or "Robie." More importantly, though, no such video ever existed. The only video was from the later stop of the vehicle and arrest of Sytle.

After reference to the video, Ricks' counsel said: "We would ask for any such film. None has been produced to us in discovery, Judge, and we don't believe there is any such film." The court then called counsel to the bench and chastised Ricks' lawyer for even asking for the video that Sytle testified about repeatedly, saying: "I don't know whether there is or isn't, but you shouldn't do that in front of the jury. You can raise that with me separately." Ricks' counsel replied: "But, Judge, I think it is highly misleading for the witness --" At that point, the court inquired into the existence of any film and the government admitted it had no such film. The court then told the government to call their next witness.

⁶ The government failed to introduce any evidence indicating Ricks was ever known as "R."

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Another witness, James Chapman, who suffered a head injury in 1996 that affects his memory, also testified. Chapman said that he had previously bought marijuana and crack on “the hot block” from numerous individuals including a female named “Dew,” a male named “T.O.” who was arrested in Chapman’s car, Ra-B, and others. Chapman said he met Ra-B through Ra-B’s drug-dealer neighbor, Danita, and that Chapman hung out on Danita’s front porch and purchased his drugs at Danita’s. Chapman also testified that Ra-B never sold drugs from the Malbroue residence at 1201 Belleville Street and he never saw Ra-B with a gun and never heard him reference a “gun.” Chapman said he heard Ra-B say “the thing” before and thought maybe that meant a gun. Chapman also said that he acted as an intermediary for a few sales to other drug dealers for Ra-B. Chapman said that he had an ongoing, paid-informant relationship with “Tony,” Special Agent Anthony Calagna with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), that started before he ever met Ricks and continued after he met Ricks.⁷ However, Chapman said authorities never asked him to make a controlled buy from Ricks. Further, authorities never even asked Chapman anything about Ricks until after Ricks was arrested. But Chapman had stopped associating with Ricks and hanging around that area by that time. During cross-examination, Chapman was unable to explain why he spelled his name “C-h-a-p-i-m-a-n” before the grand jury or why there was no record of any phone contact between himself and Ricks during the time period he says he was dealing with Ricks.

Calagna testified extensively regarding information found on cellular telephones belonging to Ricks and Malbroue. Much of his testimony involved him interpreting what he believed various messages meant. For example, Calagna testified that Malbroue sent Ricks a text messages stating: “Be careful

⁷ Chapman said the ATF paid him more than \$4,000.

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because them people riding around.” Calagna said, based on his training and experience, “them people” refers to the police. However, the very next text Calagna testified about was a message Mandi sent Ricks saying, “The police just came up the one way.” It makes no sense why Malbroue would use “them people” as code for the police in one text but refer to the police as “the police” in another text. Also, it would seem “them people” Malbroue was warning Ricks to be careful of could also be the numerous violent offenders federal officials were investigating on the block. Additionally, Calagna testified to numerous texts on Malbroue’s phone indicating that she was selling narcotics independent of Ricks. There were also numerous messages between Malbroue and her ex-boyfriend, Isiah Theophile, also known as “Pig.” Malbroue and Theophile previously had been arrested together for drug and gun violations.

Notably, Calagna did not write any investigative reports or witness reports on Ricks’ case. Instead, Calagna relied solely on the previous reports done by NOPD and whatever testimony was provided to the grand jury. Although, as we know, Malbroue was ultimately not called to testify in front of the grand jury. Instead, Calagna just remembered what she said. Calagna apparently did make some outlines of notes on some witnesses, but those were not turned over to the defense. Calagna also testified that he never considered Robbie to be anyone other than Ra-B, despite the fact that neither Ricks nor 1201 Bellevue were part of his prior investigations. However, 1209 Bellevue, which was Danita’s house two doors down, was referred to by Calagna in his grand jury presentation as “Crack Dealing Headquarters and Cook House.” During his testimony, Calagna also identified various hot block drug dealers of similar size and description to Ra-B that were included in his grand jury presentation. Another individual, Sidney Frazier, was identified by Calagna as one of the leaders of the gang Swu Woo. Calagna said, “Swu Woo it’s derived from the Blood Gang. Hot Block is derived from Swu Woo.” When asked

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whether he was aware that Robie Turner was also a member of Swu Woo, Calagna said he was not aware.

The majority mentions a neighbor who testified that he saw Ricks dealing drugs on numerous occasions and that Ricks and Malbroue worked together. That neighbor was Tory Cargo. The ATF paid Cargo \$600 for his testimony before the grand jury. Calagna testified that Cargo was having financial difficulties supporting his seven children. Cargo testified at Ricks' trial that, while on parole for a prior conviction, he was motivated to contact the ATF and offer testimony against Ricks "because of the things that I've been through on Belleville, and the way that my kids can't, you know, really go outside, you know, due to the things that go on around Belleville." Yet one of Cargo's numerous prior convictions involved him pleading guilty to having his daughter in the backseat while engaged in a drug deal in Jefferson Parish. Cargo was also arrested for possession with intent to distribute crack approximately one month after his grand jury testimony. Cargo was in custody and in a work release program for that offense when he testified at Ricks' trial. Because Cargo missed work, he also planned to receive additional payment for his testimony at trial.

Cargo testified that he got out of jail in January of 2015 and was staying at 1236 Belleville. Cargo said he would leave early in the morning to go job hunting and would not return to Belleville until "about 10 in the evening – 10 that morning." But whenever he returned from his long hours of job hunting, Cargo would visit his girlfriend, Jamie, who lived at 1213 Belleville. Cargo said Jamie lived two doors down from the Malbroue house with her sister, Cassie Picquet, who was both a drug user and a drug dealer. Cargo testified that Picquet sold crack and used heroin, which she bought from Ricks. Cargo said that when Ricks was not home, Picquet bought drugs from Mandi. Cargo

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said that he knew about this because he overheard Picquet's phone conversations.

Cargo told Calagna during interviews that he had never seen Ricks with a gun. Cargo also testified before the grand jury that he had never seen Ricks with a gun. At trial, Cargo changed his story and said that he saw a bulge in Ricks' shirt. Specifically, Cargo said: "Well, I seen a bulge in his shirt. You know how – you know how somebody, you know, has something up under their shirt and you know it's a gun? You know the difference between a phone, a knife, and a gun."

Cargo's girlfriend lived next door to 1209 Belleville, which was Danita's house. Cargo referred to Danita's house as a "trap house," a "place where all the drug dealers hang at" to "sell their crack and stuff like that." Cargo said that at different times when he was hanging out at Danita's "trap house," he saw Ra-B there too. When asked what Ra-B was doing at the trap house, Cargo said, "[w]ell, basically, you know, probably hanging out sometime or, you know, talking to the fellas who were on the – the other fellas who were over there, you know." Cargo also testified to what he believed was Ra-B asking Danita to cook some crack, "[s]o he was like, 'Teedie [Danita's nickname], I need you for to, you know, cook this up for me.'" Cargo did not explain how he knew "this" meant crack. Cargo also said he heard Ra-B talk about money, "[h]e was like, 'All, you know, all blue faces, you know, you all get your money up.'" Cargo said, "blue faces" meant 100-dollar bills and Ra-B was "really talking to the hustlers that's on the block" who were "having conversations and stuff like that." Cargo also testified that he saw a photo of Ra-B with cash in his hand. Cargo also said that all of the guys on the block were users and dealers except for him. Despite Cargo's various drug arrests, having previously been sentenced to drug court, constant association with drug dealers and users, and his penchant for trap houses, he claimed he never touched the stuff.

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As the majority states, Ricks has a Sixth Amendment right to “present witnesses to establish his defense without fear of retaliation against the witness by the government.” *United States v. Dupre*, 117 F.3d 810, 823 (5th Cir. 1997). “Substantial governmental interference with a defense witness’ choice to testify may violate the due process rights of the defendant.” *Id.* (Internal marks omitted). “[S]o long as the investigation of witnesses is not prompted by the possibility of the witnesses testifying, and so long as the government does not harass or threaten them, the defendant’s rights are not violated.” *United States v. Whittington*, 783 F2d 1210, 1219 (5th Cir. 1986); *see also United States v. Fricke*, 684 F.2d 1126, 1130 (5th Cir. 1982). Additionally, “the Fifth Amendment protects the defendant from improper governmental interference with his defense.” *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. 2002).

Ricks asserts that the government interfered with his constitutional rights to call witnesses and present a defense when it threatened Malbroue because her testimony would have been material and exculpatory. The majority seemingly disregards this argument on the basis that there is no indication Malbroue was present in the courtroom during Calagna’s testimony.⁸ Regardless of whether Malbroue heard Calagna’s testimony, there is no dispute that his testimony corroborated Malbroue’s statements about their meetings without the presence of her counsel and her fear that, if she testified to what she consistently maintained was truthful, authorities would pursue additional charges against her. Further, as Malbroue was represented by counsel, one would presume that her counsel had some inkling of what was going on at that point and that Malbroue had received a copy of the “immunity”

⁸The majority erroneously interprets this as some concession that there is no way Malbroue could possibly have known about Calagna’s reassertion of the threat at trial. It is no such thing.

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order setting out exceptions for the very charges authorities had consistently threatened.

The majority asserts that Ricks “admits the grant of immunity cured the initial alleged ‘threats’ in conversations with officers” but then says he argued “that Agent Calagna’s threat during trial undid the cure.” However, Ricks does not admit that the grant of immunity cured any threats. Ricks states that the government offered the immunity motion as a remedy for the error. He does not say the offered remedy cured any error. In fact, the grant of immunity containing exceptions for the very threats asserted by Calagna was not a cure. Moreover, I disagree with the majority’s attempt to couch this as a new issue not previously raised. Ricks has consistently asserted the entire time that Calagna made the same threat three different times – twice while interviewing Malbroue without the presence of counsel and once at trial. Ricks has also asserted the entire time that these threats were not cured by anything and constituted interference with his ability to call a witness and present a defense. Ricks objected and moved to quash two different times. There is nothing inconsistent between the arguments at trial, the arguments in his brief and his oral arguments on this matter, which the district court has already had an opportunity to rule on. *Rosedale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86, 89 (5th Cir. 2011).

The majority also states that Ricks has provided no evidence showing that Agent Calagna’s testimony was the reason that Mandi did not testify.” Thus, the majority concludes that Ricks is unable to show a causal connection between the governmental action and Malbroue’s decision not to testify. *See United States v. Anderson*, 755 F.3d 782, 792 (5th Cir. 2014). However, Ricks has provided evidence that Malbroue said she wanted to be able to testify on Ricks’ behalf but was afraid to testify because of Calagna’s threats. The majority dismisses this affidavit because it was submitted as part of the pre-

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trial motion to quash and claims it is somehow irrelevant to the argument briefed on appeal. But the affidavit is relevant to the argument briefed on appeal. Despite the government and the majority's repeated attempts to somehow sever and cure the first two threats, it is impossible to do so. Notably, Malbroue also said that "Robert had turned his life around and was not selling drugs in February 2015. Instead, he was making money as a barber, putting his drawing talents to use there as he cut designs into hair." Additionally, Malbroue said the drugs in the house actually belonged to her previous boyfriend, Pig, for whom she was holding them and to whom she had planned to return them.

The government does not dispute that Calagna told Malbroue she would be prosecuted for perjury if she testified on Ricks' behalf. Instead, the government argues that it "immunized Malbroue so that the defense could call her as a witness." But Malbroue was not immunized from anything. Not only did the immunity order contain exceptions for the very charges Calagna repeatedly threatened, but Calagna repeated the threat during trial. Despite both the majority's and the district court's characterizations, this is not about Malbroue seeking a license to perjure herself. This is about the government threatening her repeatedly by telling her that she would be prosecuted for additional charges if she testified on Ricks' behalf because it believed she was lying, not that it had proof that she actually was lying, and because the fact that she had benefited from a plea agreement that did not include the gun charge would make her guilty of perjury. From the evidence presented at trial, it is clear that the government did not have overwhelming evidence of Ricks' guilt. Moreover, it would be highly improper for the government to use a plea deal as a threat for future prosecution. No defendant would insist that the government, or in this case the state, allow him or her to plead to additional charges. The fact that the state and federal government deals or beliefs did

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not align is not the fault of Malbroue or Ricks and should not interfere with his constitutional right to call witnesses without interference and present a defense.

At bottom, Ricks and Malbroue were arrested for drugs and a gun, which was found in Malbroue's dresser in a house owned by her parents. Authorities offered Malbroue a deal wherein she only had to plead guilty to state drug charges. Then federal authorities went after Ricks for both the drugs and the gun, despite Malbroue repeatedly telling them the gun and drugs were hers. At trial, they claimed to give Malbroue immunity to testify on Ricks' behalf but threatened her that if she testified to what she had maintained the entire time – that the gun and drugs were hers, they would prosecute her federally. They reduced her to tears at one point because she believed she would lose her child. Officials also met with Malbroue without the presence of her lawyer and told her they did not want to know anything about her involvement, they just wanted her to implicate Ricks.

Authorities did not make any buys from Ricks. Authorities had two people they claim they saw purchase drugs from Ricks. However, one of those people, Hill, who knew Ricks from his cutting hair, consistently maintained she had not bought any drugs from Ricks, was not in possession of any of the types of narcotics discovered in the Malbroue residence and said she had stopped to see Ricks on the day in question to borrow money. It is unclear how Hill's testimony was even relevant to this case since Ricks was not charged with distribution and her testimony could not in any way connect Ricks to possession of any of the drugs or the gun found in the Malbroue residence. The other person had been high for two or three days, did not know the name of the person he bought drugs from, and had dealt with about 100 different people that weekend. Authorities also paid various other witnesses to testify regarding Ricks' prior narcotics activity. However, none of those witnesses

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testified as to Ricks' possession of any drugs inside the Malbroue residence. Further, at least one key government witness explicitly contradicted the government's case by stating that Ricks never sold drugs from the Malbroue residence – testimony that was consistent with Malbroue's statement.

Authorities did not attempt to obtain fingerprints or DNA evidence from the aluminum or plastic the drugs were encased in, the gun or anything else. They did not have any DNA or prints to connect Ricks to the drugs or the gun. They also had no witnesses to connect Ricks to the gun. However, what they did have was Malbroue telling them the drugs and gun were hers and why she obtained a gun. Malbroue had previously been arrested with crack cocaine, heroin and an AK-47 with Pig in June of 2014. It is unclear whether Malbroue pleaded guilty to the gun charge in that case, but she pleaded guilty to the narcotics. Officers took no notes regarding the surveillance. Officers also had no evidence that the drugs did not belong to Malbroue and Pig. Malbroue and Pig were still in contact, as evidenced by phone records and Malbroue's statements regarding her plans to return the drugs to Pig. Malbroue wanted to testify on Ricks' behalf but feared she would be prosecuted based on Calagna's repeated threats.

For all of these reasons, I conclude that the government substantially interfered with Ricks' right to call Malbroue as a witness and present a defense. Further, this constitutes clear error.

*** *Continuance***

Just before trial, the government disclosed that Officer Long, who had conducted the surveillance, had been diagnosed with a brain tumor affecting her vision just two months after the surveillance and had brain surgery shortly thereafter. Further, the government disclosed that there had been numerous other young black men investigated for similar drug dealing in the same area at the same time. Ricks asked for and was denied a continuance for additional

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time to investigate Long's medical condition and the effect it had on any identification.

The majority concludes that Ricks is unable to demonstrate prejudice, in part, because Ricks' "charges were unrelated to Officer Long's identification because he was not charged with the distributions observed during the surveillance" conducted by Long. I disagree. Other than drugs being found in a room shared by Malbroue and Ricks in the Malbroue residence, the government's strongest evidence connecting Ricks to any drugs during the time period in question was Long's testimony that she believed she saw Ricks engaged in hand-to-hand drug transactions in the street. Of the individuals stopped following Long's observations, one admitted meeting with Ricks and attempting to borrow money, but denied she had purchased any drugs and, in fact, was not in possession of any drugs of the type found in the Malbroue residence. The other individual, who had been high and awake for two or three days and had dealt with approximately 100 dealers that weekend, did not know the name of the person he had met with and said it was "a little black dude." Upon additional questioning, this witness said he did not recall a name, but eventually said one of the guys who worked the corner was named "R." The witness also testified that he only knew this person by "R" and did not know any other name until authorities told him they had him on video purchasing drugs from Ra-B. Again, no such video ever existed. Also, the government has presented no evidence that Ricks ever went by "R."

Beyond that evidence, the only other testimony was that of paid informants and drug dealers/users who claimed they had purchased drugs from Ricks at some point in the past unrelated to this investigation. These same witnesses were unable to explain discrepancies in their testimony. Additionally, as stated previously, authorities did not attempt to obtain fingerprints or DNA from any packets of drugs, the gun, or any other items.

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Thus, Long's testimony was crucial and formed the basis for the entire case. Further, the positions of the government and the majority on this would beg the question of why all of this evidence was allowed to be introduced when Ricks was not even charged with distribution and it was supposedly so unnecessary to his conviction for possession that it would not matter if it was wrong.

As the majority states, this court reviews a district court's denial of a continuance for an abuse of discretion. *United States v. Porter*, 907 F.3d 428, 439 (5th Cir. 2009). In determining whether a district court abused its discretion, this court looks to the totality of the circumstances. *United States v. Stalnaker*, 571 F.3d 428, 439 (5th Cir. 2009). The totality of the circumstances includes:

- (a) the amount of time available;
- (b) the defendant's role in shortening the time needed;
- (c) the likelihood of prejudice from denial;
- (d) the availability of discovery from the prosecution;
- (e) the complexity of the case;
- (f) the adequacy of the defense actually provided at trial;
- and (g) the experience of the attorney with the accused.

Stalnaker, 571 F.3d at 439.

Here, the government did not disclose this information until just a few days before trial. Ricks had no role in shortening the time needed. The likelihood of prejudice from an erroneous identification was significant. While Ricks was able to cross-examine Long on her medical issue, he did not have time to do additional discovery or independent investigation regarding the likelihood of whether she was having vision problems at that time, whether her vision problems had affected other NOPD cases, or whether the fact that the surveillance occurred at night could have exacerbated any problems, among other things. Long's brain tumor was so serious that she was still

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suffering from vision problems and on disability at the time of trial. When all of this is combined with the facts that Malbroue consistently stated that the drugs and guns were hers, that multiple other people, including many who looked similar to Ricks and some who also had the same or similar names, were selling drugs in the same area at the same time, and the lack of “utterly overwhelming” evidence in this case, I conclude that the district court abused its discretion in refusing to grant a continuance.

*** *Jail calls***

Over objection, Calagna also testified about some of the hundreds of jail telephone calls he listened to as part of his investigation. Some of these phone calls involved Armand Matthews, also known as “Butter.” Specifically, Calagna testified about a phone call from Butter to an individual named Sterling Adams, also known as “Apple.” A recording of the phone call was played before the jury and the government interpreted it as Butter telling Apple, “Go around Belleville tell that boy Ra-B I said give you the 500.” However, the caller does not spell Ra-B and there’s no indication he’s not saying Robbie or Robie. Additionally, the government referenced other calls where they believed the name could only be Ra-B.

On cross-examination, Ricks’ counsel asked Calagna whether he had also reviewed any of Ricks’ jail telephone calls, and Calagna said that he had. Ricks’ counsel then stated that he had “never been provided any jail calls.” Counsel further argued that “this is basic fundamental Rule 16 discovery. If there are statements from Mr. Ricks, I’m entitled to receive those. If they’re inculpatory, I certainly need to know them; if they’re exculpatory, I certainly need to know them, but I’ve not been provided anything of that sort.” Ricks’ counsel also argued, “[a]nd I don’t know, I haven’t heard them, but I suspect what he probably said was he didn’t have anything to do with these drugs, and

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if that's the case, that's certainly Brady evidence that the government would have had to turn over."

The government responded that, although authorities were able to log in and listen to the jail calls and had possession of any that were favorable to the government, they did not have possession of any other jail calls. The district court then overruled Ricks' objection and concluded there was no discovery violation. The court also said that the defense could have subpoenaed Ricks' calls and made the statement that "[t]he government isn't using them, and doesn't have them."

The majority states that Ricks cannot demonstrate an abuse of discretion on the part of the district court under Rule 16 because he fails to assert that the records were "relevant" to any issue at trial. The majority then states that, for that reason, it need not resolve the issue of whether the records were in the Government's possession, custody or control. However, I disagree.

While there is certainly an argument that the defense could not possibly have known whether the calls were relevant without having reviewed the calls, there is also an argument that any calls that were relevant for purposes of government review were also relevant to the defense. Moreover, the defense could not show the error was sufficiently prejudicial to warrant reversal without having reviewed the calls. The majority's attempt to substitute Ricks' knowledge of any of his own calls for the professional judgment of his counsel in determining relevancy or prejudice is improper. Additionally, Ricks did not know Calagna had also reviewed Ricks' jail calls until he was asked at trial.

Regarding recorded statements, Rule 16 of the Federal Rules of Criminal Procedure provides in relevant part that:

Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

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(i) any relevant written or recorded statement by the defendant if:

- the statement is within the government's possession, custody, or control; and
- the attorney for the government knows--or through due diligence could know--that the statement exists.

Fed. R. Crim. P. Rule 16(a)(1)(B)(i).

Here, the government knew the statements existed and had been reviewed. Any argument that the statements were not within the possession, custody, or control is disingenuous. While the telephone system may be maintained by the parish, the government admitted at trial that it had the capability to log in, review any and all calls it deemed relevant, obtain recordings of those calls, and introduce them as evidence at trial. Clearly this puts the statements within the control of the government. Rule 16 requires possession, custody, *or* control. (Emphasis added). Further, despite the district court's statement to the contrary, there is no requirement in this subsection that the government actually be using all of the recordings at trial.

The majority also concludes that "any claim of resulting prejudice fails given the 'overwhelming' trial evidence demonstrating Ricks' guilt." However, as stated previously, there is far from any "overwhelming" evidence of guilt here. Thus, I would conclude that the district court abused its discretion in not requiring the government to permit access to the recordings of Ricks' calls.

CONCLUSION

Because I would conclude that the government substantially interfered with Ricks' ability to call witnesses and present a defense, which constitutes clear error, and that the trial court abused its discretion in denying a continuance and in not requiring the government to permit access to Ricks' telephone calls Calagna had reviewed, I would vacate and remand. Therefore, I respectfully dissent.

USCS Const. Amend. 5

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code Service
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USCS Const. Amend. 6

Current through the ratification of the 27th Amendment on May 7, 1992.

United States Code Service > Amendments > Amendment 6 Rights of the accused.

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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18 USCS § 6002

Current through Public Law 116-21, approved June 12, 2019.

United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) > Part V. Immunity of Witnesses (Ch. 601) > CHAPTER 601. IMMUNITY OF WITNESSES (§§ 6001 — 6005)

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

- (1)a court or grand jury of the United States,
- (2)an agency of the United States, or
- (3)either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

History

HISTORY:

Added Oct. 15, 1970, P. L. 91-452, Title II, § 201(a), *84 Stat. 927*; Sept. 13, 1994, P. L. 103-322, Title XXXIII, § 330013(4), *108 Stat. 2146*.

United States Code Service
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18 USCS § 6003

Current through Public Law 116-21, approved June 12, 2019.

United States Code Service > TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005) > Part V. Immunity of Witnesses (Ch. 601) > CHAPTER 601. IMMUNITY OF WITNESSES (§§ 6001 — 6005)

§ 6003. Court and grand jury proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this title [[18 USCS § 6002](#)].

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General or any designated Assistant Attorney General or Deputy Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

- (1)** the testimony or other information from such individual may be necessary to the public interest; and
- (2)** such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

History

HISTORY:

Added Oct. 15, 1970, P. L. 91-452, Title II, § 201(a), *84 Stat. 927*; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle B, § 7020(e), *102 Stat. 4396*; Sept. 13, 1994, P. L. 103-322, Title XXXIII, § 330013(4), *108 Stat. 2146*.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA
VERSUS
ROBERT RICKS

CRIMINAL ACTION
NUMBER: 16-011
JUDGE CARL BARBIER
MAGISTRATE JUDGE JOSEPH C.
WILKINSON, JR.

**MOTION TO QUASH FOR GOVERNMENT MISCONDUCT, FOR DISCOVERY, AND
FOR EVIDENTIARY HEARING; AND OPPOSITION TO GOVERNMENT'S MOTION
TO QUASH TRIAL SUBPOENA TO S/A EVANOSKI**

ATF agents Tony Calagna and Karen Evanoski met with Mandi Malbroue twice, both times without her lawyer. AUSA David Haller was present at the second meeting, which took place on January 21, 2016. Both times, Mandi told the agents that the gun recovered from 1201 Belleville Street belonged to her, and that she started carrying it after she was kidnapped in 2014 while selling drugs near the Iberville projects, while Ricks was in jail. Both times, Mandi told the agents that she was holding the drugs recovered from 1201 Belleville Street, and that they did not belong to Robert Ricks. Both times, ATF agent Calagna told Mandi that if she testified for Ricks, she would “go down too,” *i.e.*, they would bring federal charges against her. The government has not turned over this *Brady* information, and represented that no report of these meetings with Mandi were generated. The agents did not disclose their first meeting with Mandi to the AUSA until the afternoon of September 13, 2017. In response to Ricks’ *Touhy* request to subpoena both ATF agents for trial, the AUSA refused service and moved to quash the subpoena served on S/A Evanoski (Doc. 113).

Had Mandi not been threatened with federal prosecution, she would have been willing to testify truthfully at Ricks' trial that the gun belonged to her, and that she was holding the drugs for Isiah Theophile—a boyfriend that she was still dealing with after Ricks' release from jail, who was also Malbroue's co-defendant in a drug and gun case centered on 2310 Iberville Street.

Mandi, met with Ricks' defense counsel and investigator on September 12, 2017, and disclosed the substance of her meetings with the ATF agents and the AUSA, and the truthful information that she would have testified to had she not been threatened with federal prosecution if she testified on Ricks' behalf. *See Exhibit A, David Olasky Affidavit.* If the government does not cure its interference with Ricks' fundamental right to present his own witnesses to establish his defense by granting Mandi immunity, the government's misconduct requires dismissal of the indictment.

S/A Evanoski, who participated in both ATF meetings with Mandi, is a necessary witness at trial. S/A Calagna is the one who threatened Mandi with federal prosecution if she testifies on Ricks' behalf; Ricks' counsel is entitled to call Evanoski as a witness to that conversation. The government's motion to quash the subpoena to Evanoski should be denied.

1. The Fifth and Sixth Amendments protect Ricks from improper governmental interference with his ability to present a defense.

The Sixth Amendment guarantees a criminal defendant the right to present witnesses to "establish his defense without fear of retaliation against the witness by the government." *United States v. Dupre*, 117 F.3d 810, 823 (5th Cir. 1997). The Fifth Amendment "protects the defendant from improper governmental interference with his defense." *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. 2002). "[S]ubstantial governmental interference with a defense witness' choice to testify may violate the due process rights of the defendant." *Dupre*, 783 F.3d at 823.

“Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process law.” *Washington v. Texas*, 388 U.S. 14, 19 (1967); *see also Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (“Few rights are more fundamental than that of an accused to present witnesses in his own defense.”); *Kittelson v. Dretke*, 426 F.3d 306, 318 (5th Cir. 2005) (discussing the “broad Sixth Amendment right to put on a full defense”).

2. Mandi Malbroue’s testimony would have been material and exculpatory.

As set forth in the attached affidavit of investigator David Olasky, Mandi’s testimony would have been material and exculpatory: she admits that the gun was hers, and that she was holding the drugs that were recovered from 1201 Belleville for another man. *See* Exh. A. Mandi told the agents that she knew they had found the gun in her drawer in a sock. *Id.* She said that she told them that she had the gun because, during the period when she was selling drugs out of her house on Iberville, there was an incident where someone locked a car door so she couldn’t get out, put a gun to her head, and stole her purse. *Id.* She said she acquired the gun so she would be able to protect herself if something like that ever happened again. *Id.*

Mandi said that neither the gun nor the drugs that were found at her house belonged to Robert. *Id.* Mandi said that Robert was not selling drugs in February 2015, and had been making money as a barber. *Id.* Mandi said the drugs in the house actually belonged to another guy named Pig, and that Mandi was holding them for him. *Id.* Pig was a guy she was dealing with (dating) while Robert was in jail in 2014. *Id.* Mandi said that she was planning to give the drugs back to Pig the same week she was arrested, but never got the chance. *Id.* Her plan had been to take the drugs to the restaurant where she worked, leave them in her locker there, and then give

them to Pig when he came by, because that was the only time that Robert would not be around her, and she didn't want Robert to see Pig. *Id.*

Mandi said that a lot of the guys who hung out on her block in February 2015 did sell drugs, but no one was selling drugs out of her house. *Id.* They would sell drugs off the porch of her neighbor Denita, who lived two doors down. *Id.* Denita would let them do anything, as long as they gave her some of the drugs for her personal use. *Id.* When Denita's landlord died and the man who bought the house at auction kicked Denita out, the block got quieter. *Id.*

3. Ricks seeks discovery and an evidentiary hearing on the government's threats to Malbroue that if she testified in support of Ricks' defense, she would "go down too."

The determination whether the government substantially interfered with a defense witness's free decision to testify is a "factual question" for the trial court. *See United States v. Thompson*, 130 F.3d 676, 686-87 (5th Cir. 1997).

Ricks seeks discovery from the government under *Brady*, which requires disclosure of government "actions that intimidate witnesses," *Guerra v. Collins*, 916 F.Supp. 620, 626, 631-33 (S.D. Tex. 1995), and an evidentiary hearing at which to take the testimony of the following witnesses regarding the government's substantial interference with Ricks' right to present witnesses on his own behalf:

- a) ATF Agent Tony Calagna;
- b) ATF Agent Karen Evanoski;
- c) Mandi Malbroue;
- d) AUSA David Haller.

Counsel for the government has represented that no reports were generated for either of the two meetings with Mandi. In response to requests from undersigned counsel on Tuesday, the government produced a one-page list of notations corresponding to photographs that the ATF

agents showed Mandi during the first meeting, and two pages of grand jury testimony in which Calagna recounts his version of what Mandi told him. Calagna was not asked during his grand jury testimony about threats of prosecution against Mandi.

4. S/A Evanoski is a necessary witness at the hearing on the motion to quash, and at trial should the case go forward.

S/A Evanoski is a necessary witness at trial. The government's motion to quash argues that the statements that Mandi made to the ATF agents and AUSA will not be admissible at trial. Those arguments ignore that Mandi has been made unavailable to testify as a result of the government's threats to bring federal charges against her if she testifies, meeting the unavailability standard of the hearsay exception. Ricks' counsel is additionally entitled to cross-examine the agents with the Mandi's statements to the agents for a non-hearsay purpose—attacking the reliability of the investigation. *See Kyles v. Whitley*, 514 U.S. 419, 445-46 (1995) (counsel entitled to “examine[] the police to good effect on their knowledge of [a witness's out-of-court] statements and so have attacked the reliability of the investigation”).

Ricks does not object to modifying S/A Evanoski's trial subpoena to allow her to appear on Tuesday afternoon rather than Tuesday morning. The burden of asking S/A Evanoski to book an earlier flight than the one that she's currently on, which is scheduled to land at 2:15 on Tuesday afternoon, is not so substantial to relieve her from the subpoena to appear and give testimony that is material to Ricks' defense, and to the Court's consideration of the motion to quash for improper interference with his right to subpoena Mandi to testify.

5. The remedy sought for the government's improper interference with defense witnesses.

The remedy for a constitutional violation is to be crafted to “restore[] the defendant to the circumstances that would have existed had there been no constitutional error.” *United States*

v. Stein, 541 F.3d 130, 146 (2d Cir. 2008) (citation omitted). Where there is no remedy short of dismissal that would adequately place the defendant in the same position she would have been absent the constitutional violation, dismissal of the indictment is appropriate. *Id.* at 144. Should the government chose not to immunize Mandi for her testimony, dismissal is appropriate.

Ricks requests an evidentiary hearing on the government's interference with his right to present exculpatory witnesses without fear of government retaliation against those witnesses and, after due proceedings, allow the government to elect between granting Mandi immunity for her testimony or dismissal of the indictment.

Respectfully submitted,

s/ Michael W. Magner
MICHAEL W. MAGNER (#1206)
AVERY B. PARDEE (#31280)
Jones Walker LLP
201 St. Charles Avenue, 49th Floor
New Orleans, Louisiana 70170-5100
Telephone: (504) 582-8358
Fax: (504) 589-8358
mmagner@joneswalker.com
apardee@joneswalker.com
Attorneys for Defendant,
Robert Ricks

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by filing the same in this Court's CM/ECF System this 14th day of September, 2017.

s/ Michael W. Magner

AFFIDAVIT OF DAVID OLASKY

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

DAVID OLASKY

who, after being duly sworn, did depose and state on personal knowledge:

1. I am a licensed private investigator specializing in criminal defense investigations.
2. I have been operating my own private investigation agency since 2015. Before that, I worked for six years as a staff investigator, first for the Orleans Public Defenders and then for the Capital Defense Project of Southeast Louisiana, and for two years as an associate in the appellate litigation section of Vinson & Elkins in Austin, Texas. I have a BA in History from Vanderbilt University, a JD from Yale Law School, and a certificate from Delgado Community College that shows I completed the Private Investigator Preparatory course there. I am an attorney licensed in the state of Texas (inactive status) and a notary public in the state of Louisiana.
3. Avery Pardee and Michael Magner hired me to assist with investigation on Robert Ricks's case.
4. On Tuesday, September 12, 2017, at 3 pm, I met with Mandi Malbroue, Avery Pardee, and Michael Magner in a conference room at Jones Walker's offices, on the 49th floor of 201 St. Charles Ave, New Orleans, LA 70170.
5. I had never met or spoken with Mandi before and did not set up the meeting. Avery Pardee emailed me on Friday, September 8, 2017, to tell me that Mandi was coming into their offices at 3 on Monday, September 11, 2017, and ask if I was available to meet at that time. That Monday, Ms. Pardee emailed to say that Mandi had called her to reschedule the meeting for the next day at 3.
6. Mandi said that she had spoken with her attorney, Nandi Campbell, before meeting with us, and that Ms. Campbell had told her that it was okay for Mandi to meet with us, but that Ms. Campbell would want to be involved if Mandi decided to take the stand on Robert's behalf.
7. Mandi said that she had decided she could not testify on Robert's behalf because she was afraid that, if she testified on Robert's behalf, the government would bring new federal charges against her. She said that she cannot risk any more jail time because she needs to be there for her 10-year-old son, that he really suffered the last time she was incarcerated.
8. Mandi said her fear of the government bringing new charges against her are based on two meetings she had with federal agents: the first while her state charges were still pending and she was out on bond; the second after she had pled guilty and been sent to St. Gabriel.

9. Mandi said her first meeting with federal agents happened in an office building in Metairie, somewhere near the Galleria, after Mandi had been charged in state court with gun and drug charges in connection with the February 19, 2015 search warrant at 1201 Belleville Street. Mandi also had pending state court gun and drug charges in connection with a June 1, 2014 search warrant at 2310 Iberville Street. A female agent contacted Mandi on her cell phone and asked her to come to Metairie for the meeting. Mandi had her mother drive her there, and then her mother waited in the hallway while she met with two agents: the female agent and her partner, Tony.
10. Mandi did not remember the female agent's name, but was able to give the following description: white, 5'7" or so, short brown hair, probably in her late 30s or early 40s, and normal size (just a little heavier than Mandi).
11. Mandi said that Tony and the female agent probably showed her 50 or 60 photos of people during this first meeting and asked her if she knew any of them. She said she did not know most of them.
12. Mandi said that she told the agents during this meeting that the gun that was found at the house on Belleville was hers and not Robert's, and that the drugs were also hers and not Robert's.
13. Mandi said that when she told the agents this, the agents accused her of lying to protect Robert. Mandi says the female agent was playing the role of good cop, but Tony told her if she testified on Robert's behalf, they were going to press charges on her and that she was "going to go down for this too."
14. Mandi said this first meeting lasted less than an hour.
15. Mandi said her second meeting with Tony and the female agent happened in January 2016, after she pled guilty to drug and gun charges in connection with Belleville Street and Iberville Street, and while she was incarcerated at St. Gabriel. She said deputies from St. Gabriel told her that she had a court date and took her to the federal building on Poydras, and she met there with Tony, the same female agent, and a tall guy in a suit.
16. Mandi did not remember the name of the tall guy in the suit, but was able to give the following description: tall, wearing a suit, white, dark hair, slim build, no glasses, in his mid-30s to late-30s.
17. Mandi said that during this meeting, the agents were asking her about individuals suspected of violent crime in Algiers (not Robert). Tony told her that they could put her in witness protection, but she said no. She told them being close to her family was too important to her.
18. Mandi said that during this meeting she again told the agents that the gun that was found at the house on Belleville was hers and not Robert's, and that the drugs were also hers and not Robert's.
19. Mandi said that she told the agents that she knew they had found the gun in her drawer in a sock. She said that she told them that she had the gun because, during the period when she was selling

drugs out of her house on Iberville, there was an incident where someone locked a car door so she couldn't get out, put a gun to her head, and stole her purse. She said she acquired the gun so she would be able to protect herself if something like that ever happened again.

20. Mandi said that during this meeting Tony repeated the threat he had made during the first meeting: "if you try to testify for Robert, you're going down too."
21. Mandi said that Tony never specified what charges the government would press on her, or how much time she might face, but his threats were enough to keep her from being willing to testify. She said it scares her to take the stand because she knows what they can do.
22. Mandi said that she would have been willing to testify truthfully on Robert's behalf that the gun and the drugs were not Robert's if the agents had not made her feel like her freedom, and her ability to take care of her son, would be threatened by doing so.
23. Mandi said she would refuse to answer any questions if she was subpoenaed to testify.
24. Mandi said she wants to be able to testify for Robert because she knows he's right. She said that Robert had turned his life around and was not selling drugs in February 2015. Instead, he was making money as a barber, putting his drawing talents to use there as he cut designs into hair.
25. Mandi said that neither the gun nor the drugs that were found at her house belonged to Robert. She said the drugs in the house actually belonged to another guy named Pig, and that Mandi was holding them for him. Pig was a guy she was dealing with (dating) while Robert was in jail in 2014.
26. She said Pig was one of the people who dealt drugs with her when she lived in the house on Iberville St.
27. Mandi said that she was planning to give the drugs back to Pig the same week she was arrested, but never got the chance. Her plan had been to take the drugs to the restaurant where she worked, leave them in her locker there, and then give them to Pig when he came by, because that was the only time that Robert would not be around her, and she didn't want Robert to see Pig.
28. Pig had come by her house a few weeks before she and Robert were arrested, and Mandi had made him leave because Robert was there, and she did not want Robert to see Pig. Mandi said that she and Robert were fighting a lot at that time, and their relationship was shaky at that time.
29. Mandi said that a lot of the guys who hung out on her block in February 2015 did sell drugs, but no one was selling drugs out of her house. They would sell drugs off the porch of her neighbor Denita, who lived two doors down. Denita would let them do anything, as long as they gave her some of the drugs for her personal use. When Denita's landlord died and the man who bought the house at auction kicked Denita out, the block got quieter.

30. Mandi said there probably would have been a lot of people hanging out on the block the Sunday evening before Mardi Gras. If you grow up in Algiers, your parade is NOMTOC, and most of the people from there don't go to Endymion or Bacchus or the big East Bank parades. A lot of people would go to the bar around the corner, then afterwards turn up at Denita's house.

31. Mandi said the Jeep Cherokee on Belleville Street belonged to her.

32. Our meeting with Mandi lasted about an hour and fifteen minutes.

33. I swear under penalty of perjury that the facts set forth above are true and correct to the best of my knowledge, information, and belief, pursuant to 28 U.S.C. 1746 and La. R.S. 14:123.



DAVID OLASKY

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 14th DAY OF SEPTEMBER, 2017



WITNESS/NOTARY

MY COMMISSION EXPIRES:

NOTARY ID: _____

TYLER JOHN RENCH
ATTORNEY NOTARY
State of Louisiana

My Commission Expires At Death
La. Bar Roll No. 34049
Notary ID No. 92562

Case No. 16-011 "J" (2)

PROOF OF SERVICE

This subpoena for (name of individual and title, if any) KAREN EVANOSKIwas received by me on (date) 9/14/17 I served the subpoena by delivering a copy to the named person as follows: Karen Evanoski,1 Galleria Blvd, Metairie LA, 17th flooron (date) 9/14/17 at 1:35 pm ; or I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 9/14/17

Server's signature

David Olasky, Private Investigator
Printed name and title811 N Johnson St New Orleans LA 70116

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **MISC. NO. 16-11**

v. * **SECTION: "J"**

ROBERT RICKS *

* * *

APPLICATION FOR IMMUNITY

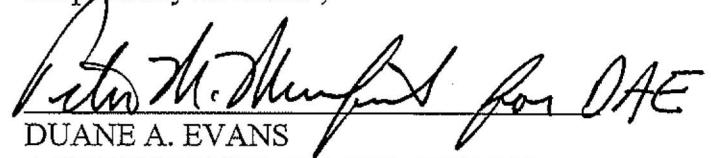
NOW INTO COURT comes the United States of America, appearing herein through the undersigned Acting United States Attorney, who respectfully moves this Court, pursuant to Title 18, United States Code, Section 6001, *et seq.*, for an Order compelling Mandi Malbroue to give testimony and to provide other information as to all matters about which she may be interrogated in the above-captioned case, and in any further proceedings resulting therefrom or ancillary thereto. In compliance with Title 18, United States Code, Sections 6002-6003, applicant, Acting United States Attorney, Duane A. Evans, respectfully represents the following:

1. Mandi Malbroue has indicated she will invoke her privilege against self-incrimination if called to testify before this Honorable Court or to provide other information in the above matter.
2. In the judgment of the undersigned, the testimony or other information, which

Mandi Malbroue may give or provide, is, or may be, necessary to the public interest.

3. This application is made with the approval of Raymond Hulser, Deputy Assistant Attorney General with the Criminal Division of the Department of Justice, pursuant to the authority vested in him by Title 18, United States Code, Section 6003(b) and Title 28 C.F.R., Section 0.175(a). A copy of the letter from said Raymond Hulser, Deputy Assistant Attorney General expressing such approval is attached hereto.

Respectfully submitted,


DUANE A. EVANS
ACTING UNITED STATES ATTORNEY
Eastern District of Louisiana
650 Poydras Street, Suite 1600
New Orleans, Louisiana 70130
Telephone: (504) 680-3000



U.S. Department of Justice

Criminal Division

Assistant Attorney General

Washington, D.C. 20530

SEP 15 2017

Duane A. Evans
Acting United States Attorney
Eastern District of Louisiana
650 Poydras Street, Suite 1600
New Orleans, Louisiana 70130

Attention: David Haller
Assistant United States Attorney

Re: *United States v. Robert Ricks*

Dear Mr. Evans:

Pursuant to the authority vested in me by 18 U.S.C. § 6003(b) and 28 C.F.R. § 0.175(a), I hereby approve your request for authority to apply to the United States District Court for the Eastern District of Louisiana for an order, pursuant to 18 U.S.C. §§ 6002-6003, requiring Mandi Malbroue to give testimony or provide other information in the above matter and in any further proceedings resulting therefrom or ancillary thereto, provided that she refuses to testify or provide information on the basis of the privilege against self-incrimination.

Sincerely,

Kenneth A. Blanco
Acting Assistant Attorney General



RAYMOND HULSER
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

*

MISC. NO. 16-11

v.

*

SECTION: "J"

ROBERT RICKS

*

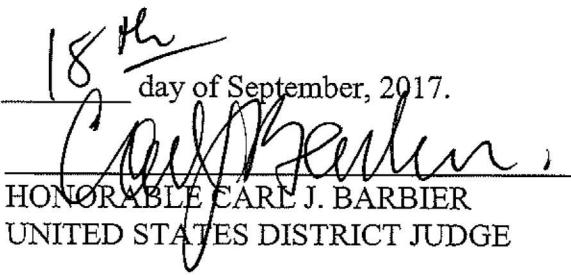
* * *

ORDER

Considering the foregoing application of Acting United States Attorney Duane A. Evans;

IT IS HEREBY ORDERED, in compliance with Title 18, United States Code, Sections 6002-6003, that Mandi Malbroue shall provide testimony and other information as to all matters about which she may be interrogated in the above-captioned matter in the Eastern District of Louisiana, and in any further proceedings resulting therefrom or ancillary thereto; and that no testimony or other information which she provides under this Order, and no information directly or indirectly derived from her testimony or other information, shall be used against her in any criminal case, except in a prosecution for perjury, giving a false statement, or failing to comply with this Order.

New Orleans, Louisiana, this 18th day of September, 2017.


HONORABLE C. J. BARBIER
UNITED STATES DISTRICT JUDGE

Defendant, Robert Ricks, may introduce the following exhibits,¹ and reserves the right to supplement this list in response to the Court's rulings on the admissibility of evidence sought to be used by the government:

1. Map of 1201 Belleville St.
2. Photographs of scene
3. Photographs of scene
10. 2016/05/17 Mandi Malbroue Phone Extraction Report (timeline)
11. 2016/05/17 Robert Ricks Phone Extraction Report (timeline)
14. Photo of NOPD Evidence (Bryco)
16. Photographs of Jak's Hair Studio
17. Robert Ricks' Barber Jacket
18. Robert Ricks' Barbershop Business Card
20. 2014/06/01 Statement of Mandi Malbroue
27. 2015/09/14 Mandi Malbroue Boykin Form/Guilty Plea – Case No. 521-390
28. 2015/09/14 Transcript of Mandi Malbroue Guilty Plea – Case Nos. 521-390, 524-488
29. 2015/12/01 Mandi Malbroue OPSO Booking Information
33. 2015/08/12 Isiah Theophile, Boykin Form/Guilty Plea – Case No. 521-390
34. Isiah Theophile Photo
35. Isiah Theophile Booking Photos
37. 2014-2015 NOPD Calls for Service 1100-1200 blocks of Belleville
47. Report From Mandi Malbroue Phone Extraction
49. Screen Shot From Pole Camera - 1200 Block of Belleville St.

¹ There are gaps in numbering because some materials that have been numbered and uploaded to trial software will be used for impeachment only, and thus are not being turned over to the government.

UNITED STATES DISTRICT COURT

EASTERN District of LOUISIANA

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
 v.)
 ROBERT RICKS)
 a/k/a Ra-B)
) Case Number: 16-11 "J"
) USM Number: 36652-034
)
) Michael Magner, Avery Pardee
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

X was found guilty on count(s) 1, 2, 3 ,4 and 5 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|--|--|----------------------|--------------|
| 21 U.S.C. 841(a)(1), (B)(1)(B), (b)(1)(C), 846 | Conspiracy to Distribute and Possess with the Intent to Distribute 28 Grams or More of Cocaine Base and a Quantity of Heroin | | 1 |
| 21 U.S.C. 841(a)(1), (B)(1)(B), 18 U.S.C. 2 | Possession with the Intent to Distribute 28 Grams or More of Cocaine Base | | 2 |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

JANUARY 11, 2018

Date of Imposition of Judgment

Signature of Judge

CARL J. BARBIER, U.S. DISTRICT JUDGE

Name and Title of Judge

JANUARY 16, 2018

Date

DEFENDANT: ROBERT RICKS
CASE NUMBER: 16-11 "J"

ADDITIONAL COUNTS OF CONVICTION

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|--|---|----------------------|--------------|
| 21 U.S.C. 841(a)(1), (b)(1)(C), 18 U.S.C. 2 | Possession with the Intent to Distribute a Quantity of Heroin | | 3 |
| 18 U.S.C. 924(c)(1)(A) | Possession of a Firearm in Furtherance of a Drug Trafficking Crime | | 4 |
| 18 U.S.C. 922(g)(1), 924(a)(2) | Possession of a Firearm by a Convicted Felon | | 5 |

DEFENDANT: ROBERT RICKS
CASE NUMBER: 16-11 "J"**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 300 months. This term consists of 240 months as to each of Counts One, Two, Three, and Five, to be served concurrently, and a term of 60 months as to Count Four, to be served consecutively to the terms imposed on Counts One, Two, Three, and Five.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

11:38AM 1 MS. PARDEE: My name is Avery Pardee, and together
11:38AM 2 with Mike Magner, we've been appointed to represent Robert in
11:38AM 3 this case.

11:38AM 4 Now, Robert hasn't led a clean life. You're
11:38AM 5 going to know that. He has been a drug dealer before. He has
11:38AM 6 pled guilty to being a drug dealer before. And the easiest way
11:38AM 7 for the government to try and convince you to convict this time
11:38AM 8 is to tell you that because he did it before, he must have done
11:38AM 9 it again. That because of the way he dresses, the pictures he
11:39AM 10 takes, the image he projects, he did it. But there aren't any
11:39AM 11 shortcuts. It is their burden to prove that he did it this
11:39AM 12 time, and he didn't.

11:39AM 13 Mandi Malbroue and Robert were originally
11:39AM 14 charged in state court. You heard that. And Mandi pled guilty
11:39AM 15 because she was guilty. She went into state court and she
11:39AM 16 admitted to possessing those drugs, to intending to distribute
11:39AM 17 those drugs. You know, she pled guilty because she was guilty,
11:39AM 18 and Robert's going to trial today because he's not.

11:39AM 19 We didn't know until recently whether you would
11:39AM 20 hear from Mandi, whether she would be able to testify. And the
11:39AM 21 reason is because while her state charges were pending, this
11:39AM 22 ATF officer and his partner contacted her. They contacted her
11:39AM 23 directly. They didn't go through her lawyer like they're
11:39AM 24 supposed to. They contacted her.

11:39AM 25 And they said, "Come on out to the ATF office at

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1 the Galleria and meet with us." So she went and she met with
2 them, and they went over a bunch of pictures because they were
3 trying to make that federal case on that other incident.

4 And they also asked her about Robert to see if
5 she'd flip on him. And she said, "I can't do that." You know,
6 she couldn't testify against Robert because those drugs were
7 hers, because that gun was hers. And when she gave that
8 information, she was threatened. They threatened that if she
9 testified for Robert, she would face federal prosecution. So
10 we didn't know if you'd hear from her.

11 They met with her a second time after she pled
12 guilty while she was already serving her sentence up in state
13 court. They writ-ed her in and brought her down and met with
14 her again, the same two agents, and this time with an Assistant
15 United States Attorney. They had convened a grand jury. And
16 in our federal system, the way it works is they present
17 charges, they present evidence in a closed proceeding to the
18 grand jurors to see if there's enough evidence to charge
19 somebody to have it come before you all.

20 Mandi said the same thing. She was not going to
21 say that Robert had those drugs. She was going to say that
22 they were hers, that the gun was hers. And they made the same
23 threat. So the grand jury didn't get the benefit of her
24 testimony. They didn't get to hear what she had to say to
25 them.

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11:41AM 1 Now, Mandi started carrying that gun because
11:41AM 2 Mandi used to be a drug dealer. In 2014, Mandi was living on
11:41AM 3 Iberville Street. Robert was living there too for a little
11:41AM 4 while. You'll hear about in March of 2014, Robert and Mandi
11:41AM 5 got into a fight, and it got physical, and Robert went to jail
11:41AM 6 on that.

11:41AM 7 While Mandi is still living on Iberville Street,
11:41AM 8 she picks up another guy, a guy named Isiah Theophile. He and
11:41AM 9 two of his guys move in, and they start selling drugs out of
11:41AM 10 the house on Iberville Street, and Mandi starts selling drugs
11:41AM 11 out of the house at Iberville Street. She sees how quick the
11:41AM 12 money is.

11:41AM 13 She's doing sales out of the house itself. And
11:41AM 14 then she's also doing sales on the street. The reason she
11:41AM 15 starts carrying that drug [sic] is that one time she went to a
11:42AM 16 gas station to meet a guy to sell him some drugs, she got in
11:42AM 17 his car, he locked the doors, and he put a gun to her head. He
11:42AM 18 robbed her. She thought she was going to die. She has carried
11:42AM 19 a gun since that day to protect herself.

11:42AM 20 So the other -- the other charges that they
11:42AM 21 mentioned in opening that Mandi has were that on June 1st,
11:42AM 22 2014 -- Robert's still in jail. He's been in jail for a few
11:42AM 23 months -- NOPD goes and they execute a search warrant at her
11:42AM 24 house at 2310 Iberville Street, Mandi's home. She tells them,
11:42AM 25 those drugs are Isiah Theophile's. She goes to court on that,

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11:42AM 1 and she ultimately pleads guilty to that case at the same time
11:42AM 2 that she pleads guilty to this Belleville case.

11:42AM 3 And the reason that that 2014 case on Iberville
11:42AM 4 is so important, because although she has always said she was
11:42AM 5 the one holding the drugs, you need to know who she was holding
11:43AM 6 the drugs for. When she gets arrested June 1st on Iberville
11:43AM 7 Street, Isiah Theophile isn't home. He's out and about. He's
11:43AM 8 running from the police for a couple of weeks.

11:43AM 9 He comes back by the house after Mandi's bonded
11:43AM 10 out on that Iberville case, and he was on his way to a cook
11:43AM 11 house. He was going to go cook down some crack cocaine to sell
11:43AM 12 it, and he didn't want to carry what he had. So he gives Mandi
11:43AM 13 his heroin, his crack cocaine, his powder cocaine, while he
11:43AM 14 goes to cook. After Mandi -- and then ultimately gets arrested
11:43AM 15 shortly after there. He's in jail pretty much from there on
11:43AM 16 out.

11:43AM 17 Mandi gets evicted from that Iberville house
11:43AM 18 because of her drug arrest. And Robert gets out of jail on
11:43AM 19 June 19th, 2014. Now, I know that time line is very minute,
11:43AM 20 but it matters.

11:43AM 21 And as you hear from witnesses, as you hear from
11:43AM 22 the government's witnesses, if we present witnesses, as you
11:43AM 23 hear from ours, pay attention to the timing and the details and
11:44AM 24 who's in the position to know what when. Because I think
11:44AM 25 you're going to be surprised by a lot of the evidence that you

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11:44AM 1 see and you hear in this case. It's not going to line up as
11:44AM 2 neatly as has been presented to you.

11:44AM 3 So, again, Mandi bonds out on her Iberville
11:44AM 4 case; Robert gets out of jail; Mandi gets evicted; Mandi moves
11:44AM 5 back by her parents' house, Iberville Street. Mandi grew up --
11:44AM 6 oh, I'm sorry, Belleville Street. Mandi grew up on Belleville
11:44AM 7 Street. Her parents have had that house for decades. Robert
11:44AM 8 gets out. He knows she's taken up with another guy, and so he
11:44AM 9 doesn't move in with her.

11:44AM 10 He stays between his friend's house and his
11:44AM 11 mom's house. He's kind of splitting his time back and forth.
11:44AM 12 And then when his friend loses the lease, he winds up moving in
11:44AM 13 with Mandi on Belleville Street as well.

11:45AM 14 This neighborhood is a high crime neighborhood.
11:45AM 15 Belleville Street is a block where people are selling a lot of
11:45AM 16 drugs, but it's also a neighborhood. It's a neighborhood where
11:45AM 17 everybody knows everybody else, where neighbors go and visit on
11:45AM 18 each other's porches. Mandi grew up there. It's a place where
11:45AM 19 if your neighbor's selling drugs and you're socializing with
11:45AM 20 them, I mean, you can't -- you can't avoid it in that
11:45AM 21 neighborhood.

11:45AM 22 I think you're going to hear a lot of evidence
11:45AM 23 about another house on that block, 1209, Danita's house. It's
11:45AM 24 two doors down. It's a house where users would congregate,
11:45AM 25 where dealers would congregate. It's also a house where people

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ANTHONY CALAGNA - DIRECT

10:05AM 1 **THE DEPUTY CLERK:** All rise.

10:05AM 2 **THE COURT:** Okay. All counsel are present. The

10:05AM 3 defendant's present. Let's bring in the jury.

10:05AM 4 **THE DEPUTY CLERK:** All rise.

10:05AM 5 (WHEREUPON, the jury entered the courtroom.)

10:05AM 6 **THE COURT:** All right. Ladies and gentlemen, please

10:06AM 7 be seated.

10:06AM 8 The government may call its next witness.

10:06AM 9 **MR. HALLER:** The government calls Anthony Calagna.

10:06AM 10 **THE COURT:** Okay.

10:06AM 11 (WHEREUPON, ANTHONY CALAGNA, having been duly sworn,

10:06AM 12 testified as follows:)

10:06AM 13 **THE DEPUTY CLERK:** Please state your full name and

10:06AM 14 correct spelling for the record.

10:06AM 15 **THE WITNESS:** My name is Anthony Calagna,

10:06AM 16 A-N-T-H-O-N-Y, C-A-L-A-G-N-A.

10:06AM 17 **DIRECT EXAMINATION**

10:06AM 18 **BY MR. HALLER:**

10:06AM 19 Q. Please introduce yourself to the jury.

10:06AM 20 A. How are you doing? My name is Anthony Calagna. At work I

10:06AM 21 go by Tony as well. I'm a special agent with the Bureau of

10:06AM 22 Alcohol, Tobacco, Firearms and Explosives.

10:06AM 23 Q. What did you do before you started working with the ATF?

10:06AM 24 A. I began my career in law enforcement with the Kenner

10:06AM 25 Police Department. I transitioned to Louisiana State Police as

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ANTHONY CALAGNA - DIRECT

10:16AM 1 like that before, and just the nature of what I had seen, along
10:16AM 2 with the observations by the New Orleans Police Department.
10:16AM 3 Q. Did you interview Mandi Malbroue before Robert Ricks was
10:16AM 4 indicted federally?
10:16AM 5 A. I did.
10:16AM 6 Q. How many times?
10:16AM 7 A. Twice.
10:16AM 8 Q. When was the first time?
10:16AM 9 A. The first time was in the fall of 2015.
10:16AM 10 Q. Where did that interview take place?
10:17AM 11 A. That interview took place in the ATF office in Metairie,
10:17AM 12 Louisiana.
10:17AM 13 Q. And you heard the defense's opening statement. Let me ask
10:17AM 14 you: Did you threaten Mandi Malbroue?
10:17AM 15 A. No, I did not.
10:17AM 16 Q. Did you tell her that you were going to -- that she was
10:17AM 17 going to be prosecuted federally?
10:17AM 18 A. No, I did not.
10:17AM 19 Q. What were you asking her about?
10:17AM 20 A. When she initially came in for the interview, we knew that
10:17AM 21 she was currently undergoing court proceedings in regards to
10:17AM 22 the incident on Belleville. We did not --
10:17AM 23 Q. Let me stop you. Did you talk to her lawyer before you
10:17AM 24 met with her if you knew she had an open charge?
10:17AM 25 A. We did not.

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ANTHONY CALAGNA - DIRECT

10:17AM 1 Q. Why didn't you talk to her lawyer?

10:17AM 2 A. Because we weren't going to address any of her

10:17AM 3 participation or current court proceedings in regards to that

10:17AM 4 case.

10:17AM 5 Q. Then what were you asking her about?

10:17AM 6 A. We were asking -- initially, we showed her pictures from a

10:17AM 7 picture book that we developed through the course of the

10:17AM 8 investigation to see if she could identify any of those

10:17AM 9 individuals, which she was able to identify some, but not many

10:17AM 10 of them.

10:17AM 11 Q. Did you ask her about Robert?

10:17AM 12 A. We did.

10:18AM 13 Q. Okay. Did she -- did she -- what did she say about

10:18AM 14 Robert?

10:18AM 15 A. She told us that the drugs found during the NOPD search

10:18AM 16 warrant were not Robert's and neither was the gun.

10:18AM 17 Q. Did you believe her?

10:18AM 18 A. No, I did not.

10:18AM 19 Q. When did the second meeting take place?

10:18AM 20 A. The second meeting took place in January of 2016.

10:18AM 21 Q. And what happened between the first meeting and the second

10:18AM 22 meeting?

10:18AM 23 A. Mandi Malbroue pled guilty to possession of the narcotics

10:18AM 24 in the house on Belleville during that time period.

10:18AM 25 MR. HALLER: I believe 43 is in evidence at this

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ANTHONY CALAGNA - DIRECT

10:19AM 1 A. Correct.

10:19AM 2 -- "to wit: marijuana."

10:19AM 3 MR. HALLER: Keep going. Keep going. Keep going.

10:19AM 4 **BY MR. HALLER:**

10:19AM 5 Q. And then what else are they charged with?

10:20AM 6 A. They're charged with, "Willfully and unlawfully possessing

10:20AM 7 controlled dangerous substance, to wit: cocaine."

10:20AM 8 Q. Okay. So they're charged with the heroin, the cocaine,

10:20AM 9 and the gun; right?

10:20AM 10 A. That's correct.

10:20AM 11 Q. Now, does Mandi Malbroue plead guilty to possessing the

10:20AM 12 drugs with the intent to distribute them?

10:20AM 13 A. No, she did not.

10:20AM 14 Q. Did she plead guilty to possessing the gun?

10:20AM 15 A. No, she did not.

10:20AM 16 Q. Did her guilty plea change your theory of the case with

10:20AM 17 respect to Robert Ricks?

10:20AM 18 A. No, it did not.

10:20AM 19 Q. Why is that?

10:20AM 20 A. We believed that both Mandi and Robert Ricks jointly

10:20AM 21 possessed the controlled dangerous substances and the narcotics

10:20AM 22 as a result of the search warrant. We knew she wasn't being

10:20AM 23 truthful. She did not take ownership and did not plead to the

10:20AM 24 firearm charge in Orleans Parish.

10:20AM 25 Q. When did the second -- where did the second meeting take

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ANTHONY CALAGNA - DIRECT

10:20AM 1 place?

10:20AM 2 A. It took place outside of the grand jury room in the

10:21AM 3 federal courthouse.

10:21AM 4 Q. Was Mandi in state custody at that point?

10:21AM 5 A. Yes, she was.

10:21AM 6 Q. And what had to happen for her to come to the grand jury?

10:21AM 7 A. She was subpoenaed by the grand jury.

10:21AM 8 Q. And who issues the subpoenas on behalf of the grand jury?

10:21AM 9 A. The United States Attorney's Office.

10:21AM 10 Q. And in order to -- was she in state or federal custody?

10:21AM 11 A. She was in state custody.

10:21AM 12 Q. And in order for a prisoner that is in state custody to

10:21AM 13 come appear before the federal grand jury, what else has to

10:21AM 14 happen?

10:21AM 15 A. She has to be writ-ed down.

10:21AM 16 Q. So there's a process in order to get her down here?

10:21AM 17 A. That's correct.

10:21AM 18 Q. Were you considering seeking federal charges against her

10:21AM 19 related to the guns and the drugs?

10:21AM 20 A. No, we were not.

10:21AM 21 Q. What were you asking her about?

10:21AM 22 A. We were asking her to tell the truth about the narcotics

10:21AM 23 and the guns found in the house.

10:21AM 24 Q. Did you ask her about the drugs and gun found during the

10:21AM 25 search outside of the grand jury?

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10:21AM 1 A. I did.

10:21AM 2 Q. What did she say?

10:21AM 3 A. She said that the guns and the drugs were hers.

10:21AM 4 Q. Did she say -- did she deny that they were Robert's?

10:21AM 5 A. No, she did not -- well, initially, she did.

10:22AM 6 Q. Okay. What did you tell her?

10:22AM 7 A. We explained to her that we knew what she was doing. We
10:22AM 8 knew that she was taking -- attempting to take the charges for
10:22AM 9 Robert. We explained to her that if she was put into the grand
10:22AM 10 jury and sworn under oath, that she'd be committing perjury in
10:22AM 11 a federal grand jury.

10:22AM 12 Q. Why did you believe that giving that testimony to the
10:22AM 13 grand jury would be perjury?

10:22AM 14 A. Because based on the evidence we knew, the fact that she
10:22AM 15 didn't plead to the gun in Orleans Parish, and that we believed
10:22AM 16 that Robert Ricks was also in control of those narcotics and
10:22AM 17 the firearm.

10:22AM 18 Q. What happened after you told her that lying in the grand
10:22AM 19 jury would be -- could be a crime?

10:22AM 20 A. She broke down. She was crying. She told us that she
10:22AM 21 just couldn't do it. She couldn't testify against Robert, that
10:23AM 22 he's the father of her child, but that she would cooperate on
10:23AM 23 any other individuals in the 1200 block of Belleville and
10:23AM 24 testify against them.

10:23AM 25 Q. Did you threaten that you would seek to charge her in the

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ANTHONY CALAGNA - DIRECT

10:23AM 1 federal drug case if she didn't change her story and say that
10:23AM 2 the drugs were Roberts?

10:23AM 3 A. No, sir.

10:23AM 4 Q. Did you try to coerce her into saying that the drugs were
10:23AM 5 Robert's?

10:23AM 6 A. No, sir.

10:23AM 7 Q. Did you coerce her into saying that the gun was Robert's?

10:23AM 8 A. No, sir.

10:23AM 9 Q. Was she called to testify before the grand jury?

10:23AM 10 A. She was not.

10:23AM 11 Q. Why not?

10:23AM 12 A. Because we knew that putting her in the grand jury knowing
10:23AM 13 that she was lying was going to make her available to potential
10:23AM 14 perjury charges, which we weren't going to do to her.

10:23AM 15 Q. Did you relay the content of her conversation to the grand
10:23AM 16 jury?

10:23AM 17 A. I did.

10:23AM 18 Q. Have you reviewed that part of your grand jury transcript?

10:23AM 19 A. I have.

10:23AM 20 Q. Did you tell the grand jury that Mandi initially told you
10:24AM 21 that the gun and the drugs were hers?

10:24AM 22 A. I did.

10:24AM 23 Q. Did you tell them that she said Robert had nothing do with
10:24AM 24 it initially?

10:24AM 25 A. I did.

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ANTHONY CALAGNA - CROSS

12:03PM 1 MR. MAGNER: That's not hearsay.

12:03PM 2 BY MR. MAGNER:

12:03PM 3 Q. So you answered, you did not speak with those police
12:03PM 4 officers?

12:03PM 5 THE COURT: He's answered. I think you need to move
12:03PM 6 on now.

12:03PM 7 MR. MAGNER: Okay.

12:03PM 8 BY MR. MAGNER:

12:03PM 9 Q. And did you not believe that that was important to find
12:03PM 10 out what the nature was of that arrest?

12:03PM 11 A. I think it corroborated through our investigation the fact
12:03PM 12 that Mandi pled guilty to her boyfriend, at the time,
12:03PM 13 narcotics, that she's a co-conspirator with Robert Ricks in
12:03PM 14 this investigation, and what she also pled guilty to, the
12:03PM 15 possession of narcotics, but not the firearm, which is
12:03PM 16 important. We believe that she assisted Robert Ricks, and that
12:03PM 17 Robert Ricks was the initial target of this investigation.

12:04PM 18 Q. But in connection with that June arrest, Ms. Malbroue was
12:04PM 19 charged with a person by the name of Isiah Theophile; correct?

12:04PM 20 A. Correct.

12:04PM 21 Q. And that's Pig?

12:04PM 22 A. Correct.

12:04PM 23 Q. All right. And he and Mandi were charged in connection
12:04PM 24 with those drugs on Iberville Street; correct?

12:04PM 25 A. Correct.

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4:38PM 1 here or be where you can get back here in a few minutes via
4:38PM 2 cell phone or something. I don't know if we're going to get a
4:38PM 3 question right away or what. Sometimes we get a question
4:38PM 4 before I get back to my office.

4:38PM 5 **MS. PARDEE:** Judge, before we break, could I raise
4:38PM 6 two legal issues?

4:38PM 7 **THE COURT:** Sure.

4:38PM 8 **MS. PARDEE:** First, we would reurge our Rule 29
4:38PM 9 motion.

4:38PM 10 **THE COURT:** Okay.

4:38PM 11 **MS. PARDEE:** And, second, we would reurge our motion
4:38PM 12 to quash in light of the agent's testimony that if Ms. Malbroue
4:38PM 13 testified consistent with what she told him, he would view that
4:38PM 14 as perjury. So that really renders the immunity that she was
4:38PM 15 given ineffective. The late disclosure of the --

4:38PM 16 **THE COURT:** Well, I don't think an immunity deal ever
4:39PM 17 gives you license to perjure yourself. Right?

4:39PM 18 **MS. PARDEE:** True. True. But the facts as
4:39PM 19 Ms. Malbroue was going to testify to them was that the gun was
4:39PM 20 hers and the drugs were hers, and the agent got up and
4:39PM 21 testified he thinks that's perjury, he thinks that's a lie.

4:39PM 22 **THE COURT:** Okay. I'm denying that motion.

4:39PM 23 In terms of Rule 29, I'm going to deny that. I
4:39PM 24 think there's plenty of evidence -- I mean, this is obviously a
4:39PM 25 case the jury needs to decide guilt or innocence.

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CRIMINAL DISTRICT COURT OF ORLEANS PARISH, LOUISIANA

Page

SECTION "H" Judge: THE HONORABLE CAMILLE BURAS
Minute Clerk: ANGELA HEISSEER
Court Reporter: MELINDA HEBERT
Assist. D.A.: ANDREW DECOSTE

THE DEFENDANT, MANDI MALBROUE, APPEARED BEFORE THE COURT FOR PRE-TRIAL CONFERENCE WITH COUNSEL, NANDI CAMPBELL.

THE STATE AMENDED COUNT 1 OF THE BILL OF INFORMATION TO READ RS
40 966(C)(1) B11P POSSESSION OF HEROIN.
THE STATE AMENDED COUNT 2 OF THE BILL OF INFORMATION TO READ RS
40 966(E)(2) POSS MARIJUANA SECOND CONVICTI.

THE DEFENDANT, THROUGH COUNSEL, WITHDREW ALL FORMER PLEAS AND IN LIEU THEREOF ENTERED A PLEA

AS TO COUNT 1, RS 40 966(C)(1) B11P POSSESSION OF HEROIN,
GUILTY AS CHARGED.
AS TO COUNT 2, RS 40 966(B)(2) POSS MARIJUANA SECOND CONVICTI,
GUILTY AS CHARGED.
AS TO COUNT 3, RS 40 967(C)(2) A04P POSSESSION OF COCAINE,
GUILTY AS CHARGED.

THIS COURT PERSONALLY INTERROGATED THE DEFENDANT AS TO HER RIGHTS TO HAVE A TRIAL BY JUDGE OR JURY AND HER RIGHT TO APPEAL IF CONVICTED; HER RIGHT TO FACE HER ACCUSERS, CROSS EXAMINE THE WITNESSES AGAINST HER AND ENTER EVIDENCE IN HER OWN BEHALF; HER RIGHT TO REMAIN SILENT AT HER TRIAL WHICH COULD NOT BE HELD AGAINST HER, OR TO TESTIFY IN HER OWN BEHALF, AND HER RIGHT AGAINST SELF-INCRIMINATION, RIGHT TO COMPULSORY PROCESS AND TO SUBPOENA WITNESSES ON HER OWN BEHALF. THE DEFENDANT ACKNOWLEDGED THAT SHE UNDERSTOOD THOSE RIGHTS AND THAT BY PLEADING GUILTY, SHE WAS GIVING UP THOSE RIGHTS. THE COURT THEN FOUND THAT THE DEFENDANT FREELY AND VOLUNTARILY WAIVED HER RIGHTS ACCORDED BY LAW AND THAT THERE WAS A SUBSTANTIAL FACTUAL BASIS TO ENTERTAIN A PLEA OF GUILTY. THE COURT ORDERED THE PLEA FEES OF 2500.00 JEF

336.50 COURT COST
804.50 ITF ASSESSED, FORFEITURE FORM OF \$
SEIZED MONIES DONE*****
WEEKLY TESTING ORDERED.
SENTENCING BOND OF 2500.00 SET BAIL ORDER # 22282.

BOND HEARING IN THIS MATTER IS SET FOR 09/21/15.
SENTENCING IN THIS MATTER IS SET FOR 12/01/15.

SEND NOTICE TO DEFENSE COUNSEL.
THE DEFENDANT WAS NOTIFIED IN COURT.

ANGELA HEISSE R, Minute Clerk

| CASE PROCESS | | CASE PROCESS | |
|----------------|-------------------------------------|----------------|-------------------------------------|
| SET FOR | <u>BOND</u> | SET FOR | <u>Sent</u> |
| <u>9/21/15</u> | <u>9.00</u> | <u>12/1/15</u> | <u>9.00</u> |
| DATE | TIME | DATE | TIME |
| NOTIFY: DEPT | <u>DNOC</u> | NOTIFY: DEPT | <u>DNOC</u> |
| JAIL | BOND | JAIL | BOND |
| ATTY | SRTY | ATTY | SRTY |
| STATE | DEF | STATE | DEF |
| DOCKETED | <input checked="" type="checkbox"/> | DOCKETED | <input checked="" type="checkbox"/> |
| ISSUED | <input checked="" type="checkbox"/> | ISSUED | <input checked="" type="checkbox"/> |
| CK/CHRG | <input checked="" type="checkbox"/> | CK/CHRG | <input checked="" type="checkbox"/> |
| CALENDAR | <input checked="" type="checkbox"/> | CALENDAR | <input checked="" type="checkbox"/> |

Hon. Arthur A. Morrell
Clerk of Criminal District Court
St. James Parish

Deputy Clerk

CALENDAR